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depresses prices. The lower prices force marginal cattlemen to liquidate their herds. As they sell off their breeding stock many of these breeding cows then go to slaughter, further increasing the supply of meat and depressing prices. With fewer breeding cows in the herd, we get smaller calf crop. This and the elimination of the one-shot increase in the meat supply, which resulted from slaughtering breeding animals, causes a shortage and higher prices. This then starts the cycle all over again.

I would point out that this is a natural cycle based on the laws of economics and the biology of the cow. It is unlikely that we can eliminate this cycle and the hardship that it periodically causes in the cattle industry. However, we can see to it that our meat import policies do not exaggerate the swings of this cycle and make the trauma even worse. And I believe that it is in the best interest of the cattlemen, the consumer, and the Nation as a whole to do so.

The formula in our current law increases meat imports during herd liquidation, when domestic meat supplies are high and prices are low. This depresses prices and drives the cattle cycle even lower, in the process bankrupting many cattlemen who might otherwise have survived. This is especially hard on the young beginning rancher, who is very vulnerable during that first critical downturn but would normally be secure enough by the next one to have a reasonably good chance of riding it out.

Then during the rebuilding phase of the cattle cycle the formula in our current law decreases our meat imports. This is at a time when domestic supplies are low and prices are high. These cutbacks cause further price increases, which are passed directly through to the consumer. These higher-than-normal prices have a major consumer impact, and any housewife can tell you that grocery store prices never seem to come down as fast or as far as they go up.

Another major problem with the existing law is the almost unlimited authority which it gives the President in imposing and suspending these import quotas. This broad authority, when faced with the procyclical problem of our current formula and with domestic political pressures to react to perceived high meat prices, has resulted in Presidential action to increase these quotas in almost every year since 1970. This has injected a very high and very damaging degree of uncertainty into the cattle business.

Ranchers are called on to make production decisions 3 years before the consumer will see the meat which the cattleman decides today to produce. Past Presidential decisions to increase meat import quotas have sometimes been a major shock to the cattlemarket and have triggered sharp price declines. These decisions have had only a very minimal impact on the consumer price of meat but they have sometimes had a major psychological impact on the cattlemarket. Given this high degree of uncertainty and its impact on the market, cattlemen, who are now in a herd rebuilding phase of the cattle cycle, have naturally reacted cautiously and are be-

ing very slow in rebuilding their herds. This will translate into fewer beefsteaks and less hamburger at correspondingly higher prices in about 3 years.

This issue of Presidential discretion is a thorny one, but it must be addressed. It has already resulted in a veto of similar legislation, which is why I now present this countercyclical proposal to the Senate for the third time. This bill is almost identical to S. 55, which has 26 cosponsors in addition to this Senator as its sponsor. It addresses both the concern of the President and the concern to the cattle industry on this issue.

The President wishes to have the discretionary authority in order to prevent any mathematical formula from setting quotas which would result in excessively high domestic meat prices. The President will have that authority during the rebuilding phase of the cattle cycle. During this time domestic production is down and the countercyclical formula is increasing our imports in response to this drop in domestic supply. Domestic prices will be moving up and the President will be able to increase meat import quotas if he believes that the countercyclical formula is not increasing the quotas fast enough to meet our domestic needs.

However, the cattleman also needs some protection from unwarranted and unexpected changes in these quotas. He will get it under this bill. The President's discretionary authority will be severely restricted during the liquidation phase of the cattle cycle. During this time domestic meat supplies are increasing, and the countercyclical formula will be decreasing imports to make room for this increase in domestic supplies. Domestic prices will be down and the small cattleman, who is trying to ride out this downturn in the cattle cycle by tightening his belt, will be very vulnerable to actions which would further depress prices. During this time the President could still increase the meat import quotas if needed, but he would have to meet very strict conditions to do so. During this liquidation phase the President could increase the quotas only in case of a national emergency or in case of a shortage resulting from natural disaster, disease, or major national market disruption.

As I have stated, a major objective of the 1964 law was to insure that our trading partners would have continued access to the U.S. market. Under current law their import quotas grow as our market grows, keeping their market share constant at about 7 percent. This guarantee of continued access to the U.S. market is retained in this bill. The countercyclical formula will retain this market share target, and it will over the long run increase our total imports as the size of our domestic market increases.

In addition, the bill sets a minimum import quota level of 1.25 billion pounds per year. This provision is designed to guarantee our trading partners in the plainest manner possible that the U.S. policy on meat imports will continue to be the most liberal by far of any beef producing nation in the world. This level of 1.25 billion pounds per year is halfway between the 1.2 billion pound figure

in previous bills and the 1.3 billion pound figure sought by the administration.

Mr. President, this bill was passed by the House of Representatives by a vote of 352 to 48. The administration testified in favor of this bill during Finance Committee hearings which I chaired on September 26. This bill was reported unanimously by the Senate Finance Committee. This bill is essentially identical to S. 55 as introduced by myself and 26 cosponsors. A total of 35 Senators are cosponsoring various countercyclical meat import bills in this Congress. I believe that a strong record of support for this bill has clearly been established.

In addition to agreeing to sign this bill, the administration has also asked that this legislation be passed and sent to the President as quickly as possible. These meat import quotas are determined and allocated among the various countries on calendar year basis. These quotas will very shortly have to be announced for the year 1980. If this bill does not become law until after January 1, then the administration will be forced to recompute these quotas after the first of the year and will have to administer these quotas under a new set of rules. This will inevitably lead to administrative problems and confusion among the countries which export meat to the United States. Because of the late date the administration is even now preparing two different sets of quota announcements. This is of course, causing confusion and uncertainty among our trading partners. I am sure that they have no more liking for uncertainty than does the American cattleman.

Mr. President, it is high time that we do something to take the Government out of the boom and bust of the cattle cycle. This bill will add a vital element of stability and certainty to our meat import policy which has long been sadly missing. Uncertainty is ever the foremost enemy of productivity, and it is increased productivity which will keep reasonably priced meat on the plate of the American housewife in years to come. Enactment of this countercyclical meat import bill is long overdue, and I strongly urge the acceptance of this bill without amendment so that it can be enacted into law this year. This Christmas present will pay positive dividends to both consumers and producers of meat for many new years to come.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CUSTOMS COURT ACT OF 1979

The Senate proceeded to consider the bill (S. 1654) to improve the Federal judicial machinery by clarifying and revising certain provisions of title 28, United States Code, relating to the judiciary and judicial review of inter-

national trade matters, and for other purposes, which had been reported from the Committee on the Judiciary with an amendment to strike all after the enacting clause and insert the following:

That this Act may be cited as the "Customs Courts Act of 1979".

TITLE I—PURPOSES

Sec. 101. The Congress declares that the purposes of this Act are—

(a) to provide for a comprehensive system of judicial review of civil actions arising from import transactions, utilizing, whenever possible, the specialized expertise of the United States Customs Court and Court of Customs and Patent Appeals and insuring uniformity afforded by the national jurisdiction of these courts;

(b) to assure access to judicial review of civil actions arising from import transactions, which access is not presently assured due to jurisdictional conflicts arising from the presently ill-defined division of jurisdiction between the district courts and the customs courts;

(c) to provide expanded opportunities for judicial review of civil actions arising from import transactions;

(d) to grant to the customs courts the plenary powers possessed by other courts established under Article III of the Constitution of the United States; and

(e) to change the name of the United States Customs Court to the United States Courts of International Trade to be more descriptive of its expanded jurisdiction and its new judicial functions and purposes relating to international trade in the United States.

TITLE II—COMPOSITION OF THE COURT OF INTERNATIONAL TRADE AND ASSIGNMENT OF JUDGES TO OTHER COURTS

Sec. 201. The United States Customs Court shall continue as constituted on the day before the date of enactment of this Act, and shall, after the date of enactment of this Act, be known as the United States Court of International Trade.

Sec. 202. (a) Section 251 of title 28, United States Code, is amended by striking out the first and second paragraphs of such section and inserting in lieu thereof the following:

"(a) The President shall appoint, by and with the advice and consent of the Senate, nine judges who shall constitute a court of record to be known as the United States Court of International Trade. The court is a court established under Article III of the Constitution of the United States.

"(b) (1) The chief judge shall be the judge in regular active service who is senior in commission of those judges who—

"(A) are sixty-four years of age or under;

"(B) have served for at least one year as judge of the court; and

"(C) have not served previously as chief judge.

"(2) (A) In any case in which no judge meets the qualifications under paragraph (1), the youngest judge in regular active service who is sixty-five years of age or over and who has served as a judge of the court for at least one year shall act as the chief judge.

"(B) In any case under subparagraph (A) in which there is no judge in regular active service who has served as a judge for more than one year, the judge in regular active service who is senior in commission and who has not served previously as chief judge shall act as the chief judge.

"(3) (A) Except as provided in subparagraph (C), a chief judge shall serve for a term of seven years, and may continue to serve after the expiration of such term until another judge is eligible to serve as chief judge under paragraph (1).

"(B) Except as provided in subparagraph (C), a judge acting as chief judge under subparagraph (A) or (B) of paragraph (2) shall serve until another judge is eligible to serve as chief judge under paragraph (1).

"(C) A judge may not serve or act as chief judge after attaining the age of seventy years unless no other judge is eligible to serve as chief judge under paragraph (1) or is eligible to act as chief judge under paragraph (2).

"(c) If the chief judge desires to be relieved of his duties as chief judge while retaining his active status as a judge, he may so certify to the Chief Justice of the United States, and thereafter, the chief judge of the court shall be such other judge who is qualified to serve or act as the chief judge under subsection (b)."

(b) The third paragraph of section 251 of title 28, United States Code, is amended by inserting "(d)" immediately before "The offices".

(c) The amendments made by this section to section 251 of title 28, United States Code, shall take effect on the date of enactment of this Act, except that those judges serving on the United States Customs Court on the day before the date of enactment of this Act shall continue to serve as judges of the Court of International Trade, and the chief judge of the Customs Court serving on the day before the date of enactment of this Act shall continue to serve as chief judge of the Court of International Trade until he attains the age of seventy years.

Sec. 203. (a) Section 293(b) of title 28, United States Code, is amended by striking out all that appears after "duties" and inserting in lieu thereof the following: "In any circuit, either in a court of appeals or district court, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit in which the need arises."

(b) Section 293(d) of title 28, United States Code, is amended to read as follows:

"(d) The chief judge of the Court of International Trade may, upon presentation to him of a certificate of necessity by the chief judge of the Court of Customs and Patent Appeals or the chief judge of the Court of Claims, designate and assign temporarily any judge of the Court of International Trade to serve as a judge of the Court of Customs and Patent Appeals or the Court of Claims."

TITLE III—JURISDICTION OF THE COURT OF INTERNATIONAL TRADE

Sec. 301. (a) Chapter 95 of title 28, United States Code, is amended to read as follows:

"Chapter 95—Court of International Trade

"Sec.

"1581. Civil actions against the United States.

"1582. Civil actions commenced by the United States.

"1583. Counterclaims.

"1584. Cure of defects.

"1585. Powers generally.

"§ 1581. Civil actions against the United States

"(a) (1) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced by any person whose protest under the Tariff Act of 1930 has been denied, in whole or in part, by the appropriate customs officer, if the administrative decision, including the legality of all orders and findings entering into the protest, involves—

"(A) the appraised value of merchandise;

"(B) the classification, rate, and amount of duties chargeable;

"(C) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;

"(D) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody (including a notice of

constructive seizure) under any provisions of the customs laws, except a determination appealable under section 337 of the Tariff Act of 1930;

"(E) the liquidation or reliquidation of an entry, or a modification thereof;

"(F) the refusal to pay a claim for drawback; or

"(G) the refusal to reliquidate an entry under section 520(c) of the Tariff Act of 1930.

"(2) Section 516A of the Tariff Act of 1930 provides the exclusive remedy for any determination subject to judicial review under such section, and such a determination is not otherwise reviewable under this subsection or any other provision of law.

"(b) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516 or 516A of the Tariff Act of 1930.

"(c) (1) After the decision of the President has been published in the Federal Register, the Court of International Trade shall have exclusive jurisdiction to review advice, findings, recommendations, and determinations of the International Trade Commission under sections 131, 201, 202, 203, 304, 406, and 503 of the Trade Act of 1974, sections 336 and 338 of the Tariff Act of 1930, and section 22 of the Agricultural Adjustment Act, solely for the purposes of determining the procedural regularity of those actions.

"(2) If no advice, findings, recommendations, or determinations have been provided to the President by the International Trade Commission, the Court of International Trade shall have exclusive jurisdiction to review any action of the commission under the sections specified in paragraph (1) of this subsection, solely for the purposes of determining the procedural regularity of those actions.

"(d) After the decision of the President has been published in the Federal Register, the Court of International Trade shall have exclusive jurisdiction to review any action of the Office of the Special Trade Representative under section 302(b)(1) or 304 of the Trade Act of 1974, solely for the purposes of determining the procedural regularity of those actions.

"(e) The Court of International Trade shall have exclusive jurisdiction of any civil action to review any determination of the Secretary of Labor or the Secretary of Commerce certifying or refusing to certify workers, communities, or businesses as eligible for adjustment assistance under the Trade Act of 1974. No injunction or writ of mandamus shall be issued in any civil action arising under this subsection.

"(f) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced by a party-at-interest to review a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979.

"(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 777(c)(2) of the Tariff Act of 1930.

"(h) (1) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a) through (g) of this section and subject to the exceptions provided in subsection (1), the Court of International Trade shall have exclusive jurisdiction over any civil action against the United States, its agencies or its officers, which—

"(A) arises directly from import transactions; and

"(B) (i) involves the Tariff Act of 1930, the Trade Expansion Act of 1962, the Trade Act of 1974, or the Trade Agreements Act of 1979; or

"(ii) a provision of—

"(I) the Constitution of the United States,

"(II) a treaty of the United States,
 "(III) an executive agreement executed by the President, or
 "(IV) an Executive order of the President, which directly and substantially involves international trade.

"(2) Section 516A of the Tariff Act of 1930 provides the exclusive remedy for any determination subject to judicial review under such section, and such a determination is not otherwise reviewable under this subsection or any other provision of law.

"(1) (1) The Court of International Trade shall not have jurisdiction—

"(A) of any civil action arising under section 305 of the Tariff Act of 1930;

"(B) subject to the provisions of paragraph (2), to review any ruling or refusal to issue or to change a ruling relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, and similar matters issued by the Secretary of the Treasury under applicable regulations other than in connection with a civil action commenced under subsection (a) of this section; or

"(C) of any civil action with respect to any effort by the United States to recover a civil fine or penalty or to enforce a forfeiture, to recover upon a bond, or to recover customs duties, other than as specified in section 1582 of this title.

"(2) Paragraph (1) (B) shall not apply if a plaintiff demonstrates that, without a substantial doubt, (A) it would be commercially impractical to obtain judicial review under subsection (a) of this section; and (B) the plaintiff would otherwise suffer irreparable injury. If the plaintiff fulfills the conditions set forth in the preceding sentence and demonstrates that the Secretary's ruling or refusal to issue or to change a ruling is arbitrary or capricious or otherwise contrary to law, the court shall award appropriate declaratory relief.

"§ 1582. Civil actions commenced by the United States

"(a) Subject to the provisions of subsections (b) and (c) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced by the United States under section 592, 704 (1) (2), or 734(1) (2) of the Tariff Act of 1930.

"(b) (1) Any party to a civil action described in subsection (a) who desires to have the action tried before a jury may, within 30 days after the action is commenced in the Court of International Trade, file a motion with the clerk of the court requesting a transfer of the action to an appropriate district court.

"(2) The Court of International Trade shall promptly order the action transferred to the appropriate district court if the court determines that the moving party is entitled to a trial by jury in such action.

"(c) Within 10 days after the issuance of an order of transfer under subsection (b) (2), the clerk of the Court of International Trade shall transmit all pleadings and documents to the clerk of the appropriate district court. The action shall proceed as if it had been commenced in the district court in the first instance, and the court shall determine the matter de novo.

"(d) The relevant provisions of sections 2461 through 2465 of this title, section 592 (e) of the Tariff Act of 1930, and the Federal Rules of Evidence shall apply in any action commenced in the Court of International Trade or transferred to a district court under this section.

"§ 1583. Counterclaims

"The Court of International Trade shall have jurisdiction to render judgment upon any counterclaim asserted by the United States—

"(1) which arises out of an import transaction pending before the court;

"(2) to recover upon a bond relating to an import transaction pending before the court; or

"(3) to recover customs duties relating to an import transaction pending before the court.

"§ 1584. Cure of defects

"(a) If a civil action within the exclusive jurisdiction of the Court of International Trade is commenced in a district court, the district court shall, in the interest of justice, transfer such civil action to the Court of International Trade, where the action shall proceed as if it had been commenced in the Court of International Trade in the first instance.

"(b) If a civil action within the exclusive jurisdiction of a district court or a court of appeals is commenced in the Court of International Trade, the Court of International Trade shall, in the interest of justice, transfer such civil action to the appropriate district court or court of appeals, where the civil action shall proceed as if it had been commenced in the district court or court of appeals in the first instance.

"§ 1585. Powers generally

"The Court of International Trade shall possess all the powers in law and equity of, or as conferred by statute upon, a district court of the United States."

(b) The table of chapters for part IV of title 28, United States Code, is amended in the item relating to chapter 95 by striking out "Customs Court" and inserting in lieu thereof "Court of International Trade".

TITLE IV—COURT OF INTERNATIONAL TRADE PROCEDURE

Sec. 401. (a) Chapter 169 of title 28, United States Code, is amended to read as follows:

"Chapter 169—COURT OF INTERNATIONAL TRADE PROCEDURE

"Sec.

"2631. Persons entitled to commence a civil action.

"2632. Commencement of a civil action.

"2633. Procedure and fees.

"2634. Notice.

"2635. Filing of official documents.

"2636. Time for commencement of action.

"2637. Exhaustion of administrative remedies.

"2638. New grounds in support of a civil action.

"2639. Burden of proof; evidence of value.

"2640. Scope and standard of review.

"2641. Witnesses; inspection of documents.

"2642. Analysis of imported merchandise.

"2643. Relief.

"2644. Decisions; findings of fact and conclusions of law; effect of decisions.

"2645. Retrial or rehearing.

"2646. Precedence of cases.

"§ 2631. Persons entitled to commence a civil action

"(a) A civil action contesting the denial, in whole or in part, of a protest under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed the protest under section 514 of the Tariff Act of 1930, or by his estate, heirs, or successors or by a surety of such person in the transaction which is the subject of the protest.

"(b) A civil action contesting the denial, in whole or in part, of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the domestic interested party who filed the petition or his estate, heirs, or successors.

"(c) A civil action contesting a determination listed in section 516A of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party who is a party to the administrative proceeding or his estate, heirs, or successors.

"(d) A civil action to review a final determination made under section 305(b) (1) of

the Trade Agreements Act of 1979 may be commenced in the Court of International Trade by any party-at-interest.

"(e) A civil action involving an application for an order to make confidential information available under section 777(c) (2) of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party who is a party to the investigation.

"(f) A civil action, other than a civil action specified in subsections (a) through (e) of this section, may be commenced in the Court of International Trade by any person adversely affected or aggrieved by an agency action within the meaning of section 702 of title 5, United States Code.

"(g) Except in civil actions commenced under section 1581(a) of this title or section 516 of the Tariff Act of 1930, any person who would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade may, by leave of court, intervene in that civil action. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

"(h) Any person who is a party to the investigation and would be adversely affected or aggrieved by a decision in a civil action involving an order to make confidential information available under section 777(c) (2) of the Tariff Act of 1930 may, by leave of court, intervene in that civil action.

"(i) For the purposes of this section, the term—

"(1) 'interested party' means—

"(A) a foreign manufacturer, producer, or exporter, or the United States importer, of merchandise which is the subject of an investigation under title VII of the Tariff Act of 1930, or a trade or business association the majority of the members of which are importers of such merchandise;

"(B) the government of a country in which such merchandise is produced or manufactured;

"(C) a manufacturer, producer, or wholesaler in the United States of a like product;

"(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product; and

"(E) a trade or business association the majority of whose members manufacture, produce, or wholesale a like product in the United States;

"(2) 'domestic interested party' means a party as defined in subparagraphs (C), (D), and (E) of paragraph (1);

"(3) 'party-at-interest' means—

"(A) a foreign manufacturer, producer, or exporter, or a United States importer, of merchandise which is the subject of a final determination;

"(B) a manufacturer, producer, or wholesaler in the United States of a like product;

"(C) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product; and

"(D) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States; and

"(4) 'like product' means a product which is like, or in the absence of like, most similar in characteristics and uses with the article subject to an investigation under title VII of the Tariff Act of 1930 or a final determination under section 305(b) (1) of the Trade Agreements Act of 1979.

"§ 2632. Commencement of a civil action

"(a) Each civil action under section 516 of the Tariff Act of 1930 or section 1581(a) of this title shall be commenced by filing with the clerk of the Court of International Trade a summons, with the content and in

the form, manner, and style prescribed by the rules of the court.

"(b) Each civil action under section 516A of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons or a summons and a complaint, as prescribed in that section, with the content and in the form, manner, and style prescribed by the rules of the court.

"(c) Except for those civil actions specified in subsections (a) and (b) of this section, all civil actions shall be commenced by filing with the clerk of the court a summons and complaint, with the content and in the form, manner, and style prescribed by the rules of the court.

"(d) The Court of International Trade may prescribe by rule that any pleading or other paper mailed by registered or certified mail properly addressed to the clerk of the court with the proper postage affixed and return receipt requested shall be deemed filed as of the date of mailing.

"§ 2633. Procedure and fees

"(a) A filing fee shall be payable upon the commencement of an action. The amount of the fee shall be fixed by the Court of International Trade, but shall be not less than \$5 nor more than the filing fee for commencing a civil action in a United States district court. The Court of International Trade may fix all other fees to be charged by the clerk of the court.

"(b) The Court of International Trade shall prescribe the rules governing pleadings and other papers, including their amendment, service, and filing, and for consolidations, severances, suspension of cases, and other procedural matters.

"(c) All pleadings and other papers filed in the Court of International Trade shall be served on all parties in accordance with the rules prescribed by the court. When the United States, its agencies, or its officers are adverse parties, service of the summons shall be made upon the Attorney General and the head of the agencies whose actions are complained of, and when injunctive relief is sought, upon the named officials sought to be enjoined.

"§ 2634. Notice

"Reasonable notice of the time and place of trial or hearing before the Court of International Trade shall be given to all parties to any civil action in accordance with the rules prescribed by the court.

"§ 2635. Filing of official documents

"(a) (1) Upon service of the summons on the Secretary of the Treasury in any civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930, or the denial of a petition under section 516 of that Act, the appropriate customs officer shall forthwith transmit to the clerk of the Court of International Trade, as prescribed by its rules, and as part of the official record—

"(A) the consumption or other entry and the entry summary;

"(B) the commercial invoice;

"(C) the special customs invoice;

"(D) a copy of protest or petition;

"(E) a copy of the denial of a protest or petition in whole or in part;

"(F) any importer's exhibits;

"(G) the official and other representative samples;

"(H) any official laboratory reports; and

"(I) a copy of any bond relating to the entry.

"(2) If any of the items listed in paragraph (1) do not exist in a particular civil action, an affirmative statement to that effect shall be transmitted to the clerk of the court.

"(b) (1) In any action commenced under section 516A of the Tariff Act of 1930, within forty days or within such period of time as the Court of International Trade may speci-

fy, after service of the complaint upon the administering authority established to administer title VII of the Tariff Act of 1930 or the United States International Trade Commission, the administering authority or the commission shall transmit to the clerk of the court, as prescribed by its rules, the record which, unless otherwise stipulated by the parties, shall consist of—

"(A) a copy of all information presented to or obtained by the administering authority or the commission during the course of the administrative proceedings, including all governmental memorandums pertaining to the case and the record of ex parte meetings required to be maintained by section 777(a) (3) of the Tariff Act of 1930; and

"(B) a copy of the determination with a statement of reasons, if any, all transcripts or records of conferences or hearings; and all notices published in the Federal Register.

"(2) Any documents, comments, or information accorded confidential or privileged status and required to be transmitted to the clerk of the Court of International Trade under paragraph (1) shall be transmitted as prescribed by its rules to the clerk of the court under seal, and its confidential or privileged status shall be preserved in the litigation. Any such documents, comments, or information shall be accompanied by a non-confidential description of the nature of such confidential documents, comments, or information. The court may examine, in camera, the confidential or privileged material and may make such material available under such terms and conditions as the court may order.

"(c) Within fifteen days or within such period of time as the Court of International Trade may specify, after service of the complaint upon the administering authority or the commission in a civil action involving an application for an order to make confidential information available under section 777(c) (2) of the Tariff Act of 1930, the administering authority or the commission shall transmit, as prescribed by its rules, to the clerk of the court under seal, the confidential information involved together with the pertinent parts of the record.

"(d) (1) In any other civil action in which judicial review is based upon the record made before the agency, the agency shall, within forty days or within such time as the Court of International Trade may specify after service of the complaint upon the agency, transmit to the clerk of the court, as prescribed by its rules—

"(A) a copy of the contested determination and the findings or report upon which it is based;

"(B) a copy of any reported hearings or conferences conducted by the agency; and

"(C) any documents, comments, or other papers filed by the public, interested parties, or governments with regard to the agency's action, identifying and transmitting, under seal, any documents, comments, or other information obtained on a confidential basis, including a nonconfidential description of the nature of such confidential documents, comments, or information.

"(2) The parties may stipulate that fewer documents, comments, or other information than that specified in paragraph (1) shall be transmitted to the court.

"(3) The confidentiality accorded such documents, comments, and information shall be preserved in the litigation, but the court may examine in camera such documents, comments, and information and may order the disclosure of such documents, comments, or information under such terms and conditions as the court deems appropriate.

"§ 2636. Time for commencement of action

"(a) A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930, is barred unless commenced in accordance with the rules of the Court of International Trade—

"(1) within one hundred and eighty days after the date of mailing of notice of denial, in whole or in part, of a protest by the Customs Service;

"(2) if no notice is mailed within the two-year period specified in section 515(a) of the Tariff Act of 1930, within one hundred and eighty days after the date of the expiration of the two-year period specified in such section; or

"(3) within one hundred and eighty days after the date of denial of a protest by operation of law under the provisions of section 515(b) of the Tariff Act of 1930.

"(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of mailing of a notice transmitted under section 516(c) of the Tariff Act of 1930.

"(c) A civil action contesting a determination by the administering authority, under section 703(c) or 733(c) of the Tariff Act of 1930, that a case is extraordinarily complicated is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the publication of the determination in the Federal Register.

"(d) A civil action contesting a reviewable determination listed in section 516A of the Tariff Act of 1930, other than a determination under section 703(c) or 733(c) of that Act, is barred unless commenced in accordance with the rules of the Court by International Trade within thirty days after the date of publication of the determination in the Federal Register.

"(e) A civil action involving an application for an order to make confidential information available under section 777(c) (2) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the denial of a request for confidential information.

"(f) A civil action contesting a final determination made under section 305(b) (1) of the Trade Agreements Act of 1979 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of publication of the determination in the Federal Register.

"(g) A civil action, other than an action specified in subsections (a) through (f) of this section, of which the court has jurisdiction under section 1581 of this title is barred unless commenced in accordance with the rules of the Court of International Trade within two years after the cause of action first accrues.

"§ 2637. Exhaustion of administrative remedies

"(a) A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 may be commenced only if all liquidated duties, charges, and exactions have been paid at the time the action is commenced, except that a surety's obligation to pay such liquidated duties, charges, and exactions is limited to the sum of any bond relating to each entry included in a denied protest. If a surety commences a civil action in the Court of International Trade, the surety shall recover only the amount of the liquidated duties, charges, and exactions paid on the entries included in the action. The excess amount of any recovery shall be paid to the importer of record, or its estate, heirs, successors, or assigns.

"(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced only by a person who has first exhausted the procedures specified in that section.

"(c) In any civil action not specified in this section, the Court of International Trade

shall require the exhaustion of appropriate administrative remedies.

"§ 2638. New grounds in support of a civil action

"In any case in which the denial, in whole or in part, of a protest is a precondition to the institution of a civil action in the Court of International Trade, the court, by rule, may consider any new ground in support of the civil action if the new ground—

"(1) applies to the same merchandise that was the subject of the protest; and

"(2) is related to the same administrative determinations listed in section 514 of the Tariff Act of 1930 that were contested in the protest.

"§ 2639. Burden of proof; evidence of value

"(a) In any civil action over which the Court of International Trade has jurisdiction under subsection (a) or (b) of section 1581, the determination of the Secretary of the Treasury, the administering authority, or the International Trade Commission, or their delegates, is presumed to be correct. The burden to prove otherwise shall rest upon the party challenging the determination.

"(b) Where the value of merchandise or any of its components is in issue—

"(1) reports or depositions of consuls, customs officers, and other officers of the United States, and depositions and affidavits of other persons whose attendance cannot reasonably be had may be admitted into evidence when served upon the opposing party in accordance with the rules of the Court of International Trade;

"(2) price lists and catalogs may be admitted in evidence when duly authenticated, relevant, and material; and

"(3) the value of merchandise shall be determined from the evidence in the record and that adduced at the trial, whether or not the merchandise or sample thereof is available for examination.

"(c) The provisions of subsection (a) shall not apply to any action commenced in the Court of International Trade under section 1582 of this title, unless permitted by the Federal Rules of Evidence.

§ 2640. Scope and standard of review

"(a) The Court of International Trade shall determine the matter de novo upon the basis of the record made before the court in the following categories of civil actions:

"(1) Civil actions contesting the denial of a protest under section 515 of the Tariff Act of 1930 involving—

"(A) except to the extent judicial review is available under subsection (b) of this section in the case of a determination made reviewable under section 516A of the Tariff Act of 1930—

"(i) the appraised value of merchandise;

"(ii) the classification, rate, and amount of duties or fees chargeable;

"(iii) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury; and

"(iv) the required redelivery of imports under the terms of an entry bond or the exclusion of merchandise from entry or delivery under the customs laws or under an action of the Customs Service;

"(B) the refusal to pay a claim for a drawback; and

"(C) the refusal to reliquidate an entry under section 520(c) of the Tariff Act of 1930.

"(2) Civil actions commenced under section 516(c) of the Tariff Act of 1930.

"(3) Civil actions commenced under section 1581(f) of this title.

"(4) Civil actions commenced under section 1581(g) of this title.

"(5) Civil actions commenced in the Court of International Trade under section 1582 of this title.

"(b) In any civil action commenced under section 516A of the Tariff Act of 1930, the court shall review the matter as specified in subsection (b) of that section.

"(c) In any civil action commenced under subsection (c) or (d) of section 1581 of this title, the court shall review the matter as specified in those subsections.

"(d) In any civil action commenced under section 1581(e) of this title, the court shall review the matter as specified in section 250 of the Trade Act of 1974. The determination of the Secretary of Commerce under sections 251 and 271 of the Trade Act of 1974 shall be subject to judicial review in the same manner and to the same extent as provided in section 250 of the Trade Act of 1974.

"(e) In any civil action not specified in this section, the court shall review the matter as provided in section 706 of title 5, United States Code.

"§ 2641. Witnesses; inspection of documents

"(a) Except as otherwise provided by law, in any civil action in the Court of International Trade, the parties and their attorneys shall have an opportunity to introduce evidence, to hear and cross-examine the witnesses of the other party, and to inspect all samples and all papers admitted or offered as evidence under rules prescribed by the court. Except as provided in section 2639 of this title, subsection (b) of this section, or any rule prescribed by the court, the Federal Rules of Evidence shall apply to all civil actions in the Court of International Trade.

"(b) The Court of International Trade may order that in any civil action trade secrets and commercial or financial information which is privileged and confidential, or any information provided to the United States by foreign governments or foreign persons, shall not be disclosed or shall be disclosed to a party, its counsel, or any other person, only under such terms and conditions as the court may order.

"§ 2642. Analysis of imported merchandise

"The Court of International Trade may order an analysis of imported merchandise and reports thereon by laboratories or agencies of the United States.

"§ 2643. Relief

"(a) In any civil action commenced under section 1581 or 1582 of this title or in any counterclaim asserted under section 1583 of this title, the Court of International Trade may, if appropriate, enter a judgment for money for or against the United States.

"(b) In any civil action commenced under section 1581(a) of this title or section 516 of the Tariff Act of 1930, if the Court of International Trade is unable to arrive at the correct determination on the basis of the evidence presented, the court may order such further administrative or adjudicative procedures that the court deems necessary.

"(c) In any civil action involving an application for an order requiring the administering authority or to the International Trade Commission to make confidential information available under section 777(c) (2) of the Tariff Act of 1930, the court may issue an order of disclosure only with respect to the information specified in that section.

"(d) In addition to the orders specified in subsections (a), (b), and (c) of this section, the Court of International Trade may order any form of relief which is appropriate, including, but not limited to, declaratory judgments, orders of remand, writs of mandamus, and prohibition and injunction.

"(e) The Court of International Trade may, in extraordinary circumstances, grant appropriate preliminary or permanent injunctive relief upon the request of a person who, after exhausting all appropriate administrative remedies, would have the right to commence a civil action in the Court of International

Trade. In ruling upon such a request, the court shall consider, among other matters, whether the person making the request will be irreparably injured if the relief is not granted, and if so, whether the irreparable injury outweighs the effect that the issuance of the requested injunction would have upon the public interest.

"§ 2644. Decisions; findings of fact and conclusions of law; effect of decisions

"(a) A final decision of the Court of International Trade in a contested civil action or a decision granting or refusing an injunction shall be supported by—

"(1) a statement of findings of fact and conclusions of law, or

"(2) an opinion stating the reasons and facts upon which the decision is based.

"(b) Upon motion of a party, or upon its own motion, made not later than thirty days after entry of judgment, the court may amend its findings or make additional findings and may amend the decision accordingly.

"(c) A decision of the Court of International Trade is final and conclusive, unless a retrial or rehearing is granted under section 2645 of this title or an appeal is taken to the Court of Customs and Patent Appeals within the time and the manner provided in section 2601 of this title.

"§ 2645. Retrial or rehearing

"After the Court of International Trade has rendered a judgment or order the court may, upon motion of a party or upon its own motion, grant a retrial or rehearing, as the case may be. A party's motion shall be made or the court's action on its own motion shall be taken, not later than thirty days after entry of the judgment or order.

"§ 2646. Precedence of cases

"(a) A civil action involving the exclusion of perishable merchandise shall be given precedence over other civil actions pending before the Court of International Trade, and shall be assigned for hearing or trial at the earliest practicable date and expedited in every way.

"(b) Except those civil actions given precedence under subsection (a), a civil action for the review of a determination under section 516A(a) (1) (B) or under section 516 A(a) (1) (E) of the Tariff Act of 1930 shall be given precedence over other civil actions pending before the court, and shall be assigned for hearing or trial at the earliest practicable date and expedited in every way.

"(c) Except those civil actions given precedence under subsection (a) or (b), a civil action involving the exclusion or redelivery of merchandise arising under section 1581 of this title or under 516 or 516A of the Tariff Act of 1930, shall be given precedence over other civil actions pending before the court, and shall be assigned for hearing or trial at the earliest practicable date and expedited in every way."

"(b) The table of chapters for part VI of title 28, United States Code, is amended in the item relating to chapter 169 by striking out "Customs Court" and inserting in lieu thereof "Court of International Trade".

TITLE V—COURT OF CUSTOMS AND PATENT APPEALS

SEC. 501. (a) Section 1541(a) of title 28, United States Code, is amended by striking out: "and from any interlocutory order granting, continuing, modifying, refusing, or dissolving an injunction, or refusing to dissolve or modify an injunction, under section 516A(c) (2) of the Tariff Act of 1930;"

(b) Section 1541 is amended by adding at the end thereof the following:

"(c) The Court of Customs and Patent Appeals has exclusive jurisdiction of any appeal from an interlocutory order of the Court of International Trade granting, continuing, modifying, refusing, or dissolving

injunctions, or refusing to dissolve or modify injunctions."

Sec. 502. (a) Section 1543 of title 28, United States Code, is amended to read as follows:

"§ 1543. International Trade Commission determinations

"The Court of Customs and Patent Appeals shall have jurisdiction to review the determinations of the United States International Trade Commission made under section 337 of the Tariff Act of 1930 relating to unfair trade practices in import trade."

(b) The table of sections for chapter 93 of title 28, United States Code, is amended by amending the item relating to section 1543 to read as follows:

"1543. International Trade Commission determinations."

Sec. 503. (a) Chapter 93 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1546. Rules of evidence; powers in law and equity; exclusive jurisdiction

"(a) Except as provided in section 2639 of this title, subsection (b) of section 2641 of this title, or any rules prescribed by the Court of Customs and Patent Appeals, the Federal Rules of Evidence shall apply in the Court in any appeal from the Court of International Trade.

(b) The Court of Customs and Patent Appeals shall have all the powers in law and equity of, or as conferred by statute upon, the courts of appeals of the United States.

(c) The Court of Customs and Patent Appeals has exclusive jurisdiction to review—

"(1) any decision of the Secretary of the Treasury to deny or revoke a customs brokers' license under section 641(a) of the Tariff Act of 1930; and

"(2) any action challenging an order to revoke or suspend a license under section 641 (b) of the Tariff Act of 1930."

(b) The table of sections for chapter 93 of that title is amended by adding at the end thereof the following:

"1546. Rules of evidence; powers in law and equity; exclusive jurisdiction."

Sec. 504. (a) Section 2601(a) of title 28, United States Code, is amended by adding the following at the end thereof: "If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen days after the date on which the first notice of appeal was filed."

(b) The first sentence of section 2601(b) of title 28, United States Code, is amended—

(1) by inserting "or cross appeal" after "appeal" each time it appears; and

(2) by striking out "which shall include a concise statement of the errors complained of".

(c) The third sentence of section 2601(b) of title 28, United States Code, is amended by striking out "and the Secretary of the Treasury or their designees" and inserting in lieu thereof "and any named official".

(d) Section 2601(c) of title 28, United States Code, is amended by inserting the following after the first sentence: "Findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the Court of International Trade to judge the credibility of the witnesses. A party may raise on appeal the question of whether findings of fact are clearly erroneous, whether or not the party raising the questions made an objection to such findings in the Court of International Trade or made a motion to amend such findings."

Sec. 505. (a) Section 2602 of title 28, United States Code, is amended to read as follows:

"§ 2602. Precedence of cases

"(a) A civil action involving the exclusion of perishable merchandise shall be given

precedence over other civil actions pending before the Court of Customs and Patent Appeals, and shall be assigned for hearing at the earliest practicable date and expedited in every way.

"(b) Except those civil actions given precedence under subsection (a), a civil action for the review of a determination under section 516A(a)(1)(B) or under section 516A(a)(1)(E) of the Tariff Act of 1930 shall be given precedence over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way.

"(c) Except those civil actions given precedence under subsection (a) or (b), a civil action involving the exclusion of redelivery of merchandise arising under section 1581 of this title or under 516 or 516A of the Tariff Act of 1930, shall be given precedence over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way.

"(d) Except those civil actions given precedence under subsection (a), (b), or (c), an appeal from findings of the Secretary of Commerce provided for in headnote 6 to schedule 8, part 4, of the Tariff Schedules of the United States (19 U.S.C. 1202) shall be given precedence over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way."

(b) The item relating to section 2602 in the table of sections for chapter 167 of title 28, United States Code, is amended to read as follows:

"2602. Precedence of cases."

Sec. 506. (a) Chapter 167 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 2603. Judicial conference

"The Court of Customs and Patent Appeals is authorized to conduct an annual judicial conference for the purposes of considering the business of the court and improvements in the administration of justice in the court."

(b) The table of contents for chapter 167 of such title is amended by adding at the end thereof the following new item:

"2603. Judicial conference."

TITLE VI—CONFORMING AMENDMENTS RELATING TO THE NAME OF THE COURT

Sec. 601. Section 1 of the Act entitled "An Act to provide the name by which the Board of General Appraisers and members thereof shall hereby after be known", approved May 28, 1926 (19 U.S.C. 405(a)), is amended by striking out "Customs Court" and inserting "Court of International Trade" each time it appears.

Sec. 602. Section 305 of the Tariff Act of 1930 (19 U.S.C. 1305) is amended by striking out "Customs Court" and inserting "Court of International Trade".

Sec. 603. Section 502(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b)) is amended by striking out "Customs Court" and inserting "Court of International Trade".

Sec. 604. Section 503 of the Tariff Act of 1930 (19 U.S.C. 1503) is amended by striking out "Customs Court" and inserting "Court of International Trade".

Sec. 605. Section 514(a) of the Tariff Act of 1930 (19 U.S.C. 1514(a)) is amended by striking out "Customs Court" and inserting "Court of International Trade" each time it appears.

Sec. 606. Section 516(d) of the Tariff Act of 1930 (19 U.S.C. 1516(d)) is amended by striking out "Customs Court" and inserting "Court of International Trade".

Sec. 607. Section 516(e) of the Tariff Act of 1930 (19 U.S.C. 1516(e)) is amended by striking out "Customs Court" and inserting "Court of International Trade".

Sec. 608. Section 516(f) of the Tariff Act of 1930 (19 U.S.C. 1516(f)) is amended by striking out "Customs Court" and inserting "Court of International Trade".

Sec. 609. Section 516A of the Tariff Act of 1930 is amended by striking out "Customs Court" and inserting "Court of International Trade" each time it appears.

Sec. 610. Section 528 of the Tariff Act of 1930 (19 U.S.C. 1528) is amended by striking out "Customs Court" and inserting "Court of International Trade".

Sec. 611. Section 563(a) of the Tariff Act of 1930 (19 U.S.C. 1563) is amended by striking out "Customs Court" and inserting "Court of International Trade".

Sec. 612. Section 7443(d) of the Internal Revenue Code of 1954 (26 U.S.C. 7443(d)) is amended by striking out "Customs Court" and inserting "Court of International Trade".

Sec. 613. Section 252 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "Court of International Trade".

Sec. 614. Section 253(a) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "Court of International Trade".

Sec. 615. Section 254 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade".

Sec. 616. Section 255(a) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade".

Sec. 617. (a) Section 293(b) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade".

(b) Section 293(c) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade" each time it appears.

Sec. 618. Section 569(a) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade".

Sec. 619. Section 605 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade" each time it appears.

Sec. 620. Section 871 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade".

Sec. 621. Section 873 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade".

Sec. 622. Section 1340 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade".

Sec. 623. (a) Section 1541(a) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "Court of International Trade".

(b) Section 1541(b) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade" each time it appears.

Sec. 624. Section 2601 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade" each time it appears.

Sec. 625. The table of chapters for part I of title 28, United States Code is amended in the item relating to chapter 11 by striking out "Customs Court" and inserting "United States Court of International Trade".

Sec. 626. The table of chapters for part III of title 28, United States Code, is amended in the item relating to chapter 55 by striking out "Customs Court" and inserting "United States Court of International Trade".

Sec. 627. (a) The section heading for section 1541 of title 28, United States Code, is amended by striking out "Customs Court"

and inserting "Court of International Trade".

(b) The table of sections for chapter 93, title 28, United States Code, is amended in the item relating to section 1541 by striking out "Customs Court" and inserting "Court of International Trade".

Sec. 628. (a) The section heading for section 2601 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "Court of International Trade".

(b) The table of sections for chapter 167, title 28, United States Code, is amended in the item relating to section 2601 by striking out "Customs Court" and inserting "Court of International Trade".

TITLE VII—TECHNICAL AND CONFORMING AMENDMENTS

Sec. 701. Section 337(c) of the Tariff Act of 1930 is amended—

(1) by inserting immediately after "Appeals" the following: ", subject to chapter 7 of title 5, United States Code,"; and

(2) by striking out the last sentence and inserting in lieu thereof the following: "Notwithstanding the foregoing, review of commission determinations under subsections (d), (e), and (f) as to its findings on the amount and nature of bond, the appropriate remedy, or the effect of such order on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, shall be reviewable only for abuse of administrative discretion."

Sec. 702. Section 516A(a) (1) of the Tariff Act of 1930 is amended by inserting "or such other time as provided by statute" immediately after "30 days".

Sec. 703. The second sentence of section 516A(c) (2) of the Tariff Act of 1930 is amended to read as follows: "In ruling upon a request for such injunctive relief, the court shall consider the factors set forth in section 2643(e) of title 28, United States Code."

Sec. 704. The second sentence of section 516A(d) of the Tariff Act of 1930 is amended to read as follows: "The party filing the action shall notify all such interested parties of the filing of an action under this section in the form, manner, style and within the time prescribed by the rules of that court."

Sec. 705. Section 592(e) of the Tariff Act of 1930 is amended in the introductory paragraph to read as follows:

"(e) COURT OF INTERNATIONAL TRADE AND DISTRICT COURT PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade or in a United States district court, section 604 of this Act for the recovery of any monetary penalty claimed under this section, or transferred from the Court of International Trade to a district court under section 1581 of title 28, United States Code—"

Sec. 706. (a) The second sentence of the second paragraph of paragraph (b) of section 641 of the Tariff Act of 1930 is amended by striking out all that appears after "filing," and before "sixty," and inserting in lieu thereof "in the Court of Customs and Patent Appeals, within".

(b) The second paragraph of section 641 (b) of the Tariff Act of 1930 is amended by inserting the following immediately after the third sentence: "For purposes of this paragraph, all relevant rules prescribed in accordance with sections 2072 and 2112 of title 28, United States Code, apply to the Court of Customs and Patent Appeals."

Sec. 707. (a) Section 250(a) of the Trade Act of 1974 is amended by striking out "court of appeals for the circuit in which such worker or group is located or in the United States Court of Appeals for the District of Columbia Circuit" and inserting in lieu thereof "Court of International Trade".

(b) (1) Section 250(c) of the Trade Act of 1974 is amended by inserting the following immediately after the first sentence: "The judgment of the Court of International Trade shall be subject to review by the United States Court of Customs and Patent Appeals as prescribed by the rules of the Court of Customs and Patent Appeals."

(2) Section 250(c) of the Trade Act of 1974 is further amended by striking out "court" the second time it appears and inserting in lieu thereof "Court of Customs and Patent Appeals".

Sec. 708. Section 518(a) of title 28, United States Code, is amended by inserting "and in the Court of International Trade" immediately after "Claims".

Sec. 709. Section 751 of title 28, United States Code, is amended by adding at the end thereof the following:

"(f) When the Court of International Trade is sitting in a judicial district other than the Southern and Eastern Districts of New York, the clerk of that district court or an authorized deputy clerk, upon the request of the chief judge of the Court of International Trade and with the approval of that district court, shall act in the district as clerk of the Court of International Trade in accordance with the rules and orders of the Court of International Trade for all purposes relating to any case pending before the court."

Sec. 710. Section 1331(b) of title 28, United States Code, is amended by adding at the end thereof the following: "The district courts shall not possess jurisdiction under this section over any matter within the exclusive jurisdiction of the Court of International Trade."

Sec. 711. Section 1337 of title 28, United States Code, is amended by adding at the end thereof the following:

"(c) The district courts shall not possess jurisdiction under this section over any matter within the exclusive jurisdiction of the Court of International Trade."

Sec. 712. Section 1355 of title 28, United States Code, is amended by adding at the end thereof the following: "The Court of International Trade shall have jurisdiction of any such action or proceeding commenced in such court under section 1582 of this title."

Sec. 713. Section 1356 of title 28, United States Code, is amended by adding at the end thereof the following: "The Court of International Trade shall have jurisdiction of any such action or proceeding commenced in such court under section 1582 of this title."

Sec. 714. The second paragraph of section 1491 of title 28, United States Code, is amended by inserting "within the exclusive jurisdiction of the Court of International Trade, or" after "suits" the first time it appears in the first sentence.

Sec. 715. Section 1919 of title 28, United States Code, is amended by inserting "or the Court of International Trade" after "court" the first time it appears.

Sec. 716. Section 1963 of title 28, United States Code, is amended by inserting the following immediately after "district court" the first time it appears: "or in the Court of International Trade".

Sec. 717. The first paragraph of section 2414 of title 28, United States Code, is amended by inserting "or Court of International Trade" after "court" in the first sentence.

Sec. 718. (a) (1) Except as provided in paragraph (2), this Act, and the amendments made by this Act, shall become effective on the date on which title VII of the Tariff Act of 1930, as added by title I of the Trade Agreements Act of 1979, takes effect.

(2) The amendments made by section 506 of this Act shall become effective on October 1, 1980.

(b) Nothing in this Act shall cause the dismissal of any action commenced prior to

the date of enactment under jurisdictional statutes relating to the United States Customs Court or the United States Court of Customs and Patent Appeals in effect before the date of enactment of this Act.

(c) (1) Except as provided in paragraph (2), in reviewing any determination made before January 1, 1980, under section 303 of the Tariff Act of 1930 or the Antidumping Act, 1921, the Court of International Trade and the Court of Customs and Patent Appeals shall base its review on the law as it existed on the date of such determination.

(2) The scope of review and procedures for such review shall be governed by the provisions of, and the amendments made by, this Act.

The amendment was agreed to.

● Mr. DeCONCINI. Mr. President, I am pleased to initiate discussion of S. 1654, as amended, the Customs Courts Act of 1979, a bill to improve the laws governing the jurisdiction, powers and procedures of the U.S. Customs Court.

The history of the U.S. Customs Court has been one of constant evolution, from an administrative unit to a court established under article III of the U.S. Constitution. In the late 1960's, it was recognized that both the procedures and jurisdiction of the Customs Court were in need of revision. Congress decided at this time to devote its efforts to the enactment of the Customs Court Act of 1970, a reform which substantially modified procedures, leaving the clarification of jurisdictional matters for the future. To complicate matters, the types of decisions involving import transactions was expanded as the Customs Court evolved. It is with these considerations that I believe the proposed Customs Courts Act of 1979 will help clarify the law through the resolution of jurisdictional and other problems regarding its status as a court established under article III.

This legislation is the end product of a comprehensive effort by the committee to assess and incorporate information gathered from hearings held on last year's predecessor bill, S. 2857 and this year's proposal, S. 1654.

The comparatively recent increase of litigation in the field of international trade, combined with the overburdened and overworked district courts have caused considerable delays in the resolution of disputes. Conversely, the volume of litigation instituted in the Customs Court has decreased. Under these circumstances, the committee believes that it makes good sense to clarify the ill-defined jurisdiction and to require that some of the cases now instituted in the overcrowded district courts be transferred to the underutilized Customs Court.

S. 1654 would create a comprehensive system of judicial review of civil actions arising from import transactions. This court, redesignated the U.S. Court of International Trade, would be equipped with the same expertise and specialized skills that the U.S. Customs Court has acquired through the years. It will also insure that it has all the powers in law and equity of a district court of the United States. Moreover, the court would continue to remain national in scope to insure uniformity of decision and policy to import action litigation.

The committee believes that the clarification and expansion of Custom Court's jurisdiction will help to assure access to judicial review of these civil actions arising from import transactions. A national court with nationwide impact would eliminate the possibility of conflicting decisions on any one point of dispute and would enable the Customs Court to render extremely expeditious decisions.

Prior to today's consideration of S. 1654, as amended, there has been some discussion regarding proposed section 1581(i)(1).

Inadvertently, the section-by-section analysis of the report which accompanies S. 1654 regarding section 1581(i)(1)(A) indicated that section 305 of the Tariff Act of 1930 referred to actions concerning national security. Instead this reference should have referred to the prohibition upon the importation of immoral articles. Although the reference to national security was inadvertent and the statement in the report should have referred to the prohibition, it is the intent of this legislation to retain judicially developed rule that the courts will not review the merits of determinations by the President that considerations of national security require him to exercise certain statutory authority such as that contained in section 232 of the Trade Expansion Act of 1962.

In addition to this clarification regarding subsection (i)(1)(A) there has been some question as to the intent of subsection (i)(1)(C). Subsection (i)(1)(C) is designed to make it clear that no civil action may be commenced in the Court of International Trade by the United States to recover a civil fine or penalty or to enforce a forfeiture, to recover upon a bond, or to recover customs duties, other than as specified in section 1582 of the bill. Those actions are limited to civil actions commenced under section 592, 704(i)(2), or 734(i)(2) of the Tariff Act of 1930. Section 1581(i)(1)(C) is in no way intended to limit actions which may be brought against the United States.

While technically this provision might have more appropriately been incorporated into section 1582, I feel that the intent has been made sufficiently clear in the bill and certainly in this statement. Of course, the counterclaim provision contained in section 1583 of the bill is also an implicit exception to the general prohibition contained in subsection (i)(1)(C) of section 1581.

Concluding, S. 1654 would make it clear that the U.S. Court of International Trade possesses broad jurisdiction to entertain certain civil actions arising out of import transactions. In addition, the Customs Courts Act of 1979 would make it clear that, in those civil actions within its jurisdiction, the court possesses the authority to grant the appropriate relief when required to remedy an injury. This legislation will offer the international trade community, as well as domestic interests, a vastly improved forum for judicial review of administrative actions dealing with importations.

Mr. President, I would like to take this opportunity to pay special tribute to those individuals who, through their untiring efforts, have made this bill a real-

ity so that it could come to the floor today.

Michael Altier, counsel to the subcommittee which I chair, deserves the lion's share of the credit for the outstanding and immense amount of effort he put in. I know firsthand of the many hours, late nights and weekends that he has devoted to this legislation. Also, Romano Romani, my staff director, deserves a great deal of credit for his tireless efforts in preparing this proposal for our review today.

● Mr. DOLE. Mr. President, as ranking minority member of the Subcommittee on Improvements in Judicial Machinery of the Judiciary Committee, I am pleased to support S. 1654, the Customs Courts Act of 1979. This legislation was originally introduced late in the 95th Congress. Since that time, we have held hearings on the measure and have been able to devote extensive scrutiny to its provisions. Based on this work, this bill in its current form corrects many problems identified with earlier legislative proposals on this subject. Thus, we on the Judiciary Committee feel this to be a generally uncontroversial bill and one which can be recommended to our colleagues in the Senate.

To a great extent, this bill is part of a broader legislative effort undertaken by the Senate Finance and House Ways and Means Committees. Earlier this year, those committees began an examination of issues relating to judicial review of countervailing and antidumping duty decisions. The work of those committees culminated in the Trade Agreements Act of 1979, which is now law. Several of the provisions of an earlier version of the Customs Courts Act were incorporated in that statute. The present bill which we are now considering articulates with the provisions of the Trade Agreements Act and thus may generally be considered part of the implementing legislation of that act.

S. 1654 will provide for a comprehensive system of judicial review of civil actions arising from controversies over import transactions. Whenever possible the specialized expertise of the U.S. Customs Court and the Court of Customs and Patent Appeals will be utilized. In this regard, that bill assures access to the courts for such civil actions by more clearly defining the division of jurisdiction between the district courts and the customs courts. Furthermore, the bill grants to the customs courts the plenary powers possessed by other courts established under article III of the Constitution. Finally, S. 1654 provides expanded opportunities for judicial review of civil actions arising from import transactions and changes the name of the U.S. Customs Court to the U.S. Court of International Trade to reflect this expanded and more comprehensive jurisdiction.

In addition, Mr. President, because this bill might be the last legislation coming from our subcommittee which will reach the Senate floor this session, I would like to take this opportunity to compliment our able chairman, the Senator from Arizona (Senator DeCONCINI). Senator DeCONCINI has not only been an effective and enthusiastic chairman of

the Subcommittee on Improvements in Judicial Machinery, but he and his staff have extended every courtesy to myself and my staff working on the minority side. In this environment, I feel we have developed a very fruitful working relationship which has redounded to the benefit of the Senate and the citizens we serve. Thus, I would like to express my personal appreciation for the effective leadership demonstrated by the Senator from Arizona. I look forward to continuing this productive relationship in the coming session of Congress.

To return to the pending business, in sum I believe this bill makes some worthwhile, albeit technical improvements in our judicial machinery dealing with international transactions. I recommend it to my colleagues and encourage them to support this legislation.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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bill (of la: whic mitti with On "assig On t the pu May 8, 1922,"

So as to make the bill read:
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any provisions of the Act of May 8, 1922 (42 Stat. 506), the Leo N. Levi Memorial Hospital Association is authorized to assign or convey all or any portion of or interests in and to lots one and two, in block 114 in the city of Hot Springs, Arkansas, to a nonprofit corporation organized under the laws of the State of Arkansas, its successors or assigns, for the purpose of erecting and maintaining thereon a housing facility for the elderly. Execution of such assignment or conveyance by the Leo N. Levi Memorial Hospital Association and execution of mortgages by said nonprofit corporation or its successors or assigns, in connection with the housing facility, shall not constitute a forfeiture of any rights granted to the Leo N. Levi Memorial Hospital Association by said Act of May 8, 1922. If at any time after lots one or two of block 114 are assigned or conveyed to said nonprofit corporation the property is used or permitted to be used for purposes other than housing facilities for the elderly or the purposes provided for in the Act of May 8, 1922, all the rights, privileges, and powers in such property authorized by this Act or by said Act of May 8, 1922, shall be forfeited to the United States.

The amendments were agreed to.
● Mr. BUMPERS. Mr. President, the passage of S. 1850 by the Senate today

PERMISSION FOR COMMITTEE ON THE JUDICIARY TO SIT ON TUESDAY, WEDNESDAY, AND THURSDAY, SEPTEMBER 23, 24, AND 25, 1980, DURING 5-MINUTE RULE

Mr. VOLKMER. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be permitted to sit while the House is reading for amendment under the 5-minute rule on Tuesday, September 23; Wednesday, September 24; Thursday, September 25, 1980.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

Mr. MCCLORY. Mr. Speaker, reserving

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CUSTOMS COURTS ACT OF 1980

Mr. VOLKMER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7540) to improve the Federal judicial machinery by clarifying and revising certain provisions of title 28, United States Code, relating to the judiciary and judicial review of international trade matters, and for other purposes, as amended.

The Clerk read as follows:

H.R. 7540

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Customs Courts Act of 1980."

TITLE I—COMPOSITION OF THE COURT OF INTERNATIONAL TRADE AND ASSIGNMENT OF JUDGES TO OTHER COURTS

COMPOSITION OF COURT

Sec. 101. Section 251 of title 28, United States Code, is amended to read as follows:

"§ 251. APPOINTMENT AND NUMBER OF JUDGES; OFFICES

"(a) The President shall appoint, by and with the advice and consent of the Senate, nine judges who shall constitute a court of record to be known as the United States Court of International Trade. Not more than five of such judges shall be from the same political party. The court is a court established under article III of the Constitution of the United States.

"(b) The President shall designate one of the judges of the Court of International Trade who is less than seventy years of age to serve as chief judge. The chief judge shall continue to serve as chief judge until he reaches the age of seventy years and another judge is designated as chief judge by the President. After the designation of another judge to serve as chief judge, the former chief judge may continue to serve as a judge of the court.

"(c) The offices of the Court of International Trade shall be located in New York, New York."

ASSIGNMENT OF JUDGES

Sec. 102. (a) Section 293(b) of title 28, United States Code, is amended by striking

out "Customs Court" and all that follows through "need arises" and inserting in lieu thereof "Court of International Trade to perform judicial duties in any circuit, either in a court of appeals or district court, upon presentation of a certificate in which the need arises".

(b) Section 293(d) of title 28, United States Code, is amended to read as follows:

"(d) The chief judge of the Court of International Trade may, upon presentation to him of a certificate of necessity by the chief judge of the Court of Customs and Patent Appeals or the chief judge of the Court of Claims, designate and assign temporarily any judge of the Court of International Trade to serve as a judge of the Court of Customs and Patent Appeals or the Court of Claims."

TITLE II—JURISDICTION OF THE COURT OF INTERNATIONAL TRADE

JURISDICTION OF THE COURT

Sec. 201. Chapter 95 of title 28, United States Code, is amended to read as follows:

"CHAPTER 95—COURT OF INTERNATIONAL TRADE

"Sec.

"1581. Civil actions against the United States and agencies and officers thereof.

"1582. Civil actions commenced by the United States.

"1583. Counterclaims, cross-claims, and third-party actions.

"1584. Cure of defects.

"1585. Powers in law and equity.

"§ 1581. Civil actions against the United States and agencies and officers thereof

"(a) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest in whole or in part, under section 515 of the Tariff Act of 1930.

"(b) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516 of the Tariff Act of 1930.

"(c) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516A of the Tariff Act of 1930.

"(d) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—

"(1) any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 with respect to the eligibility of workers for adjustment assistance under such Act;

"(2) any final determination of the Secretary of Commerce under section 251 of the Trade Act of 1974 with respect to the eligibility of a firm for adjustment assistance under such Act; and

"(3) any fiscal determination of the Secretary of Commerce under section 271 of the Trade Act of 1974 with respect to the eligibility of a firm for adjustment assistance under such Act; and

"(3) any final determination of the Secretary of Commerce under section 271 of the Trade Act of 1974 with respect to the eligibility of a community for adjustment assistance under such Act.

"(e) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review any final determination of the Secretary of the Treasury under section 305(b)(1) of the Trade Agreements Act of 1979.

"(f) The Court of International Trade shall have exclusive jurisdiction of any civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930.

"(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—

"(1) any decision of the Secretary of the

Treasury to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930; and

"(2) any order of the Secretary of the Treasury to revoke or suspend a customhouse broker's license under section 641(b) of the Tariff Act of 1930.

"(h) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review, prior to the importation of the goods involved, a ruling issued by the Secretary of the Treasury, or a refusal to issue or change such a ruling, relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, or similar matters, but only if the party commencing the civil action demonstrates to the court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to such importation.

"(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)–(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

"(1) revenue from imports on tonnage;

"(2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;

"(3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or

"(4) administration and enforcement with respect to the matters referred to in paragraphs (1)–(3) of this subsection and subsections (a)–(h) of this section.

"(j) The Court of International Trade shall not have jurisdiction of any civil action arising under section 305 of the Tariff Act of 1930.

"§ 1582. Civil actions commenced by the United States

"The Court of International Trade shall have exclusive jurisdiction of any civil action which arises out of an import transaction and which is commenced by the United States—

"(1) to recover a civil penalty under section 592, 704(1)(2), or 734(1)(2) of the Tariff Act of 1930;

"(2) to recover upon a bond relating to the importation of merchandise required by the laws of the United States or by the Secretary of the Treasury; or

"(3) to recover customs duties.

"§ 1583. Counterclaims, cross-claims, and third-party actions

"In any civil action in the Court of International Trade, the court shall have exclusive jurisdiction to render judgment upon any counterclaim, cross-claim, or third-party action of any party, if (1) such claim or action involves the imported merchandise that is the subject matter of such civil action, or (2) such claim or action is to recover upon a bond or customs duties relating to such merchandise.

"§ 1584. Cure of defects

"(a) If a civil action within the exclusive jurisdiction of the Court of International Trade is commenced in a district court of the United States, the district court shall, in the interest of justice, transfer such civil action to the Court of International Trade, where such action shall proceed as if it had been commenced in the Court of International Trade in the first instance.

"(b) If a civil action within the exclusive jurisdiction of a district court, a court of appeals, or the Court of Customs and Patent Appeals is commenced in the Court of International Trade, the Court of International Trade shall, in the interest of justice, trans-

fer such civil action to the appropriate district court or court of appeals or to the Court of Customs and Patent Appeals where such action shall proceed as if it had been commenced in such court in the first instance.

“§ 1585. Powers in law and equity

“The Court of International Trade shall possess all the powers in law and equity of, or as conferred by statute upon, a district court of the United States.”

TITLE III—COURT OF INTERNATIONAL TRADE PROCEDURE

COURT PROCEDURE

Sec. 301. Chapter 169 of title 28, United States Code, is amended to read as follows:

“CHAPTER 169—COURT OF INTERNATIONAL TRADE PROCEDURE

“Sec.

“2631. Persons entitled to commence a civil action.

“2632. Commencement of a civil action.

“2633. Procedure and fees.

“2634. Notice.

“2635. Filing of official documents.

“2636. Time for commencement of action.

“2637. Exhaustion of administrative remedies.

“2638. New grounds in support of a civil action.

“2639. Burden of proof; evidence of value.

“2640. Scope and standard of review.

“2641. Witnesses; inspection of documents.

“2642. Analysis of imported merchandise.

“2643. Relief.

“2644. Interest.

“2645. Decisions.

“2646. Retrial or rehearing.

“2647. Precedence of cases.

“§ 2631. Persons entitled to commence a civil action

“(a) A civil action contesting the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed the protest pursuant to section 514 of such Act, or by a surety on the transaction which is the subject of the protest.

“(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed such petition.

“(c) A civil action contesting a determination listed in section 516A of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party who was a party to the proceeding in connection with which the matter arose.

“(d) (1) A civil action to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 with respect to the eligibility of workers for adjustment assistance under such Act may be commenced in the Court of International Trade by a worker, group of workers, certified or recognized union, or authorized representative of such worker or group that applies for assistance under such Act and is aggrieved by such final determination.

“(2) A civil action to review any final determination of the Secretary of Commerce under section 251 of the Trade Act of 1974 with respect to the eligibility of a firm for adjustment assistance under such Act may be commenced in the Court of International Trade by a firm or its representative that applies for assistance under such Act is aggrieved by such final determination, or by any other interested domestic party that is aggrieved by such final determination.

“(3) A civil action to review any final determination of the Secretary of Commerce under section 271 of the Trade Act of 1974 with respect to the eligibility of a community for adjustment assistance under such Act may be commenced in the Court of International Trade by a community that applies for assistance under such Act and is aggrieved

by such final determination, or by any other interested domestic party that is aggrieved by such final determination.

“(e) A civil action to review a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 may be commenced in the Court of International Trade by any person who was a party-at-interest with respect to such determination.

“(f) A civil action involving an application for the issuance of an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party whose application for disclosure of such confidential information was denied under section 777(c)(1) of such Act.

“(g) (1) A civil action to review any decision of the Secretary of the Treasury to deny or revoke a customs broker's license under section 641(a) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose license was denied or revoked.

“(2) A civil action to review any order of the Secretary of the Treasury to revoke or suspend a customs broker's license under section 641(b) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose license was revoked or suspended.

“(h) A civil action described in section 1581(h) of this title may be commenced in the Court of International Trade by the person who would have standing to bring a civil action under section 1581(a) of this title if he imported the goods involved and filed a protest which was denied, in whole or in part, under section 515 of the Tariff Act of 1930.

“(i) Any civil action of which the Court of International Trade has jurisdiction, other than an action specified in subsections (a)-(h) of this section, may be commenced in the court by any person adversely affected or aggrieved by agency action within the meaning of section 702 of title 5.

“(j) (1) Any person who would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade may, by leave of court, intervene in such action, except that—

“(A) no person may intervene in a civil action under section 515 or 516 of the Tariff Act of 1930;

“(B) in a civil action under section 516A of the Tariff Act of 1930, only an interested party who was a party to the proceeding in connection with which the matter arose may intervene, and such person may intervene as a matter of right; and

“(C) in a civil action under section 777(c)(2) of the Tariff Act of 1930, only a person who was a party to the investigation may intervene, and such person may intervene as a matter of right.

“(2) In those civil actions in which intervention is by leave of court, the Court of International Trade shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

“(k) In this section—

“(1) ‘interested party’ has the meaning given such term in section 771(9) of the Tariff Act of 1930; and

“(2) ‘party-at-interest’ means—

“(A) a foreign manufacturer, producer, or exporter, or a United States importer, of merchandise which is the subject of a final determination under section 305(b)(1) of the Trade Agreements Act of 1979;

“(B) a manufacturer, producer, or wholesaler in the United States of a like product;

“(C) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product; and

“(D) a trade or business association a

majority of whose members manufacture, produce, or wholesale a like product in the United States.

“§ 2632. Commencement of a civil action

“(a) Except for civil actions specified in subsections (b) and (c) of this section, a civil action in the Court of International Trade shall be commenced by filing concurrently with the clerk of the court a summons and complaint, with the content and in the form, manner, and style prescribed by the rules of the court.

“(b) A civil action in the Court of International Trade under section 515 or section 516 of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons, with the content and in the form, manner, and style prescribed by the rules of the court.

“(c) A civil action in the Court of International Trade under section 516A of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons or a summons and a complaint, as prescribed in such section, with the content and in the form, manner, and style prescribed by the rules of the court.

“(d) The Court of International Trade may prescribe by rule that any summons, pleading, or other paper mailed by registered or certified mail properly addressed to the clerk of the court with the proper postage affixed and return receipt requested shall be deemed filed as of the date of mailing.

“§ 2633. Procedure and fees

“(a) A filing fee shall be payable to the clerk of the Court of International Trade upon the commencement of a civil action in such court. The amount of the fee shall be prescribed by the rules of the court, but shall be not less than \$5 nor more than the filing fee for commencing a civil action in a district court of the United States. The court may fix all other fees to be charged by the clerk of the court.

“(b) The Court of International Trade shall prescribe rules governing the summons, pleading, and other papers, for their amendment, service, and filing, for consolidations, severances, suspensions of cases, and for other procedural matters.

“(c) All summons, pleadings, and other papers filed in the Court of International Trade shall be served on all parties in accordance with rules prescribed by the court. When the United States, its agencies, or its officers are adverse parties, service of the summons shall be made upon the Attorney General and the head of the Government agency whose action is being contested. When injunctive relief is sought, the summons, pleadings, and other papers shall also be served upon the named officials sought to be enjoined.

“§ 2634. Notice

“Reasonable notice of the time and place of trial or hearing before the Court of International Trade shall be given to all parties to any civil action, as prescribed by the rules of the court.

“§ 2635. Filing of official documents

“(a) (1) Upon service of the summons on the Secretary of the Treasury in any civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the appropriate customs officer shall forthwith transmit to the clerk of the Court of International Trade, as prescribed by its rules and as a part of the official record—

“(A) the consumption or other entry and the entry summary;

“(B) the commercial invoice;

“(C) the special customs invoice;

“(D) a copy of the protest or petition;

“(E) a copy of the denial, in whole or in part, of the protest or petition;

“(F) the importer's exhibits;

“(G) the official and other representative samples;

"(H) any official laboratory reports; and
 "(I) a copy of any bond relating to the entry.

"(2) If any of the items listed in paragraph (1) of this subsection do not exist in a particular civil action, an affirmative statement to that effect shall be transmitted to the clerk of the court.

"(b) (1) In any civil action commenced in the Court of International Trade under section 516A of the Tariff Act of 1930, within forty days or within such other period of time as the court may specify, after the date of service of a complaint on the administering authority established to administer title VII or the Tariff Act of 1930 or the United States International Trade Commission, the administering authority or the Commission shall transmit to the clerk of the court the record of such action, as prescribed by the rules of the court. The record shall, unless otherwise stipulated by the parties, consist of—

"(A) a copy of all information presented to or obtained by the administering authority or the Commission during the course of the administrative proceedings, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be maintained by section 777(a) (3) of the Tariff Act of 1930; and

"(B) (i) a copy of the determination and the facts and conclusions of law upon which such determination was based, (ii) all transcripts or records of conferences or hearings, and (iii) all notices published in the Federal Register.

"(2) The administering authority or the Commission shall identify and transmit under seal to the clerk of the court any document, or information that is accorded confidential or privileged status by the Government agency whose action is being contested and that is required to be transmitted to the clerk under paragraph (1) of this subsection. Any such document, comment, or information shall be accompanied by a nonconfidential description of the nature of the material being transmitted. The confidential or privileged status of such material shall be preserved in the civil action, but the court may examine the confidential or privileged material in camera and may make such material available under such terms and conditions, as the court may order.

"(c) Within fifteen days, or within such other period of time as the Court of International Trade may specify, after service of a summons and complaint in a civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c) (2) of the Tariff Act of 1930, the administering authority or the Commission shall transmit under seal to the clerk of the Court of International Trade, as prescribed by its rules, the confidential information involved, together with pertinent parts of the record. Such information shall be accompanied by a nonconfidential description of the nature of the information being transmitted. The confidential status of such information shall be preserved in the civil action, but the court may examine the confidential information in camera and may make such information available under a protective order consistent with section 777(c) (2) of the Tariff Act of 1930.

"(d) (1) In any other civil action in the Court of International Trade in which judicial review is to proceed upon the basis of the record made before an agency, the agency shall, within forty days or within such other period of time as the court may specify, after the date of service of the summons and complaint upon the agency, transmit to the clerk of the court, as prescribed by its rules—

"(A) a copy of the contested determination and the findings or report upon which such determination was based;

"(B) a copy of any reported hearings or conferences conducted by the agency; and

"(C) any documents, comments, or other papers filed by the public, interested parties, or governments with respect to the agency's action.

"(2) The agency shall identify and transmit under seal to the clerk of the court any document, comment, or other information that was obtained on a confidential basis and that is required to be transmitted to the clerk under paragraph (1) of this subsection. Any such document, comment, or information shall include a nonconfidential description of the nature of the material being transmitted. The confidential or privileged status of such material shall be preserved in the civil action, but the court may examine such material in camera and may make such material available under such terms and conditions as the court may order.

"(3) The parties may stipulate that fewer documents, comments, or other information than those specified in paragraph (1) of this subsection shall be transmitted to the clerk of the court.

"§ 2636. Time for commencement of action

"(a) A civil action contesting the denial, in whole or in part, of a protest under section 515 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade—

"(1) within one hundred and eighty days after the date of mailing of notice of denial of a protest under section 515(a) of such Act; or

"(2) within one hundred and eighty days after the date of denial of a protest by operation of law under the provisions of section 515(b) of such Act.

"(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of mailing of a notice pursuant to section 516(c) of such Act.

"(c) A civil action contesting a reviewable determination listed in section 516A of the Tariff Act of 1930, other than a determination under section 703(b), 703(c), 733(b), or 733(c) of such Act, is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the publication of such determination in the Federal Register.

"(d) (1) A civil action contesting a determination by the administering authority under section 703(c) or 733(c) of the Tariff Act of 1930 that a case is extraordinarily complicated is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the publication of such determination in the Federal Register.

"(2) A civil action contesting a negative determination by the administering authority under section 703(b) or 733(b) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the publication of such determination in the Federal Register.

"(e) A civil action contesting a final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 or a final determination of the Secretary of Commerce under section 251 or section 271 of such Act is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of notice of such determination.

"(f) A civil action contesting of final determination made under section 305(b) (1) of the Trade Agreements Act of 1979 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the publication of such determination in the Federal Register.

"(g) A civil action involving an application for the issuance of an order making confidential information available under section

777(c) (2) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the denial of the request for such confidential information.

"(h) A civil action contesting the denial or revocation by the Secretary of the Treasury of a customhouse broker's license under section 641(a) of the Tariff Act of 1930 or the revocation or suspension by such Secretary of a customhouse broker's license under section 641(b) of such Act is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of the entry of the decision or order of such Secretary.

"(i) A civil action of which the Court of International Trade has jurisdiction under section 1581 of this title, other than an action specified in subsections (a)–(h) of this section, is barred unless commenced in accordance with the rules of the court within two years after the cause of action first accrues.

"§ 2637. Exhaustion of administrative remedies

"(a) A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade only if all liquidated duties, charges, or exactions have been paid at the time the action is commenced, except that a surety's obligation to pay such liquidated duties, charges, or exactions is limited to the sum of any bond related to each entry included in the denied protest.

"(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade only by a person who has first exhausted the procedures set forth in such section.

"(c) A civil action described in section 1581(h) of this title may be commenced in the Court of International Trade prior to the exhaustion of administrative remedies if the person commencing the action makes the demonstration required by such section.

"(d) In any civil action not specified in this section, the Court of International Trade shall, where appropriate, require the exhaustion of administrative remedies.

"§ 2638. New grounds in support of a civil action

"In any civil action under section 515 of the Tariff Act of 1930 in which the denial, in whole or in part, of a protest is a precondition to the commencement of a civil action in the Court of International Trade, the court, by rule, may consider any new ground in support of the civil action if such new ground—

"(1) applies to the same merchandise that was the subject of the protest; and

"(2) is related to the same administrative decision listed in section 514 of the Tariff Act of 1930 that was contested in the protest.

"§ 2639. Burden of proof; evidence of value

"(a) (1) Except as provided in paragraph (2) of this subsection, in any civil action commenced in the Court of International Trade under section 515, 516, or 516A of the Tariff Act of 1930, the decision of the Secretary of the Treasury, the administering authority, or the International Trade Commission is presumed to be correct. The burden of proving otherwise shall rest upon the party challenging such decision.

"(2) The provisions of paragraph (1) of this subsection shall not apply to any civil action commenced in the Court of International Trade under section 1582 of this title.

"(b) In any civil action described in section 1581(h) of this title, the person commencing the action shall have the burden of making the demonstration required by such section by clear and convincing evidence.

"(c) Where the value of merchandise or any of its components is in issue in any civil action in the Court of International Trade—

"(1) reports or depositions of consuls, customs officers, and other officers of the United States, and depositions and affidavits of other persons whose attendance cannot reasonably be had, may be admitted into evidence when served upon the opposing party as prescribed by the rules of the court; and

"(2) price lists and catalogs may be admitted in evidence when duly authenticated, relevant, and material.

"§ 2640. Scope and standard of review

"(a) The Court of International Trade shall make its determinations upon the basis of the record made before the court in the following categories of civil actions:

"(1) Civil actions contesting the denial of a protest under section 515 of the Tariff Act of 1930.

"(2) Civil actions commenced under section 516 of the Tariff Act of 1930.

"(3) Civil actions commenced to review a final determination made under section 305 (b) (1) of the Trade Agreements Act of 1979.

"(4) Civil actions commenced under section 777(c) (2) of the Tariff Act of 1930.

"(5) Civil actions commenced to review any decision of the Secretary of the Treasury to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930.

"(6) Civil actions commenced under section 1582 of this title.

"(b) In any civil action commenced in the Court of International Trade under section 516A of the Tariff Act of 1930, the court shall review the matter as specified in subsection (b) of such section.

"(c) In any civil action commenced in the Court of International Trade to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 or any final determination of the Secretary of Commerce under section 251 or section 271 of such Act, the court shall review the matter as specified in section 284 of such Act.

"(d) In any civil action not specified in this section, the Court of International Trade shall review the matter as provided in section 708 of title 5.

"§ 2641. Witnesses; inspection of documents

"(a) Except as otherwise provided by law, in any civil action in the Court of International Trade, each party and its counsel shall have an opportunity to introduce evidence, to hear and cross-examine the witnesses of the other party, and to inspect all samples and papers admitted or offered as evidence, as prescribed by the rules of the court. Except as provided in section 2639 of this title, subsection (b) of this section, or the rules of the court, the Federal Rules of Evidence shall apply to all civil actions in the Court of International Trade.

"(b) The Court of International Trade may order that trade secrets and commercial or financial information which is privileged and confidential, or any information provided to the United States by any foreign government or foreign person, may be disclosed to a party, its counsel, or any other person under such terms and conditions as the court may order.

"§ 2642. Analysis of imported merchandise

"The Court of International Trade may order an analysis of imported merchandise and reports thereon by laboratories or agencies of the United States.

"§ 2643. Relief

"(a) The Court of International Trade may enter a money judgment—

"(1) for or against the United States in any civil action commenced under section 1581 or 1582 of this title; and

"(2) for or against the United States or any other party in any counterclaim, cross-claim, or third-party action under section 1583 of this title.

"(b) If the Court of International Trade is unable to determine the correct decision on the basis of the evidence presented in any civil action, the court may order a retrial or rehearing for all purposes, or may order such further administrative or adjudicative procedures as the court considers necessary to enable it to reach the correct decision

"(c) (1) Except as provided in paragraphs (2), (3), and (4) of this subsection, the Court of International Trade may, in addition to the orders specified in subsections (a) and (b) of this section, order any other form of relief that is appropriate in a civil action, including, but not limited to, declaratory judgments, orders of remand, injunctions, and writs of mandamus and prohibition.

"(2) The Court of International Trade may not grant an injunction or issue a writ of mandamus in any civil action commenced to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 or any final determination of the Secretary of Commerce under section 251 or section 271 of such Act.

"(3) In any civil action involving an application for the issuance of an order directing the administering authority or the International Trade Commission to make confidential information available under section 777 (c) (2) of the Tariff Act of 1930, the Court of International Trade may issue an order of disclosure only with respect to the information specified in such section.

"(4) In any civil action described in section 1581(h) of this title, the Court of International Trade may only order the appropriate declaratory relief.

"(d) If a surety commences a civil action in the Court of International Trade, such surety shall recover only the amount of the liquidated duties, charges or exactions paid on the entries included in such action. The excess amount of any recovery shall be paid to the importer of record.

"§ 2644. Interest

"If in a civil action in the Court of International Trade under section 515 of the Tariff Act of 1930 the plaintiff obtains monetary relief by a judgment or under a stipulation agreement, interest shall be allowed at an annual rate established under section 6621 of the Internal Revenue Code of 1954. Such interest shall be calculated from the date of the filing of the summons in such action to the date of the refund.

"§ 2645. Decisions

"(a) A final decision of the Court of International Trade in a contested civil action or a decision granting or refusing a preliminary injunction shall be supported by—

"(1) a statement of findings of fact and conclusions of law; or

"(2) an opinion stating the reasons and facts upon which the decision is based.

"(b) After the Court of International Trade has rendered a judgment the court may, upon the motion of a party or upon its own motion, amend its findings or make additional findings and may amend the decision and judgment accordingly. A motion of a party or the court shall be made not later than thirty days after the date of entry of the judgment.

"(c) A decision of the Court of International Trade is final and conclusive, unless a retrial or rehearing is granted pursuant to section 2646 of this title or an appeal is taken to the Court of Customs and Patent Appeals within the time and in the manner provided in section 2601 of this title.

"§ 2646. Retrial or rehearing

"After the Court of International Trade has rendered a judgment or order, the court may, upon the motion of a party or upon its own motion, grant a retrial or rehearing, as the case may be. A motion of a party or the court shall be made not later than thirty days after the date of entry of the judgment or order.

"§ 2647. Precedence of cases

"The following civil actions in the Court of International Trade shall be given precedence, in the following order, over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way:

"(1) First, a civil action involving the exclusion of perishable merchandise or the redelivery of such merchandise.

"(2) Second, a civil action for the review of a determination under section 516A(a) (1) (B) (i) or (ii) of the Tariff Act of 1930.

"(3) Third, a civil action commenced under section 515 of the Tariff Act of 1930 involving the exclusion or redelivery of merchandise.

"(4) Fourth, a civil action commenced under section 516 or 516A of the Tariff Act of 1930, other than a civil action described in paragraph (2) of this section."

JURY TRIALS

Sec. 302. (a) Chapter 121 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1876. Trial by jury in the Court of International Trade

"(a) In any civil action in the Court of International Trade which is to be tried before a jury, the jury shall be selected in accordance with the provisions of this chapter and under the procedures set forth in the jury selection plan of the district court for the judicial district in which the case is to be tried.

"(b) Whenever the Court of International Trade conducts a jury trial—

"(1) the clerk of the district court for the judicial district in which the Court of International Trade is sitting, or an authorized deputy clerk, shall act as clerk of the Court of International Trade for the purposes of selecting and summoning the jury;

"(2) the qualifications for jurors shall be the same as those established by section 1865(b) of this title for jurors in the district courts of the United States;

"(3) each party shall be entitled to challenge jurors in accordance with section 1870 of this title; and

"(4) jurors shall be compensated in accordance with section 1871 of this title."

(b) The section analysis for chapter 121 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1876. Trial by jury in the Court of International Trade."

(c) Section 1862 of title 28, United States Code, is amended by inserting "or in the Court of International Trade" immediately after "United States".

TITLE IV—COURT OF CUSTOMS AND PATENT APPEALS

JURISDICTION OF THE COURT

Sec. 401. (a) (1) Section 1541(a) of title 28, United States Code, is amended to read as follows:

"(a) The Court of Customs and Patent Appeals shall have exclusive jurisdiction of appeals from all final decisions of the Court of International Trade."

(2) Section 1541 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The Court of Customs and Patent Appeals shall have exclusive jurisdiction of appeals from interlocutory orders of the Court of International Trade granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions."

(b) (1) Section 1543 of title 28, United States Code, is amended to read as follows:

"§ 1543. International Trade Commission determinations

"The Court of Customs and Patent Appeals shall have jurisdiction to review the final determinations of the United States

International Trade Commission made under section 337 of the Tariff Act of 1930 relating to unfair trade practices in import trade."

(2) The item relating to section 1543 in the section analysis of chapter 93 of title 28, United States Code, is amended to read as follows:

"1543. International Trade Commission determinations."

POWERS OF THE COURT

Sec. 402. (a) Chapter 93 of title 28, United States Code, as amended by section 401 of this Act, is further amended by adding at the end thereof the following new section:

"§ 1546. Powers in law and equity
"The Court of Customs and Patent Appeals shall have all the powers in law and equity of, or as conferred by statute upon, a court of appeals of the United States."

(b) The section analysis of chapter 93 of title 28, United States Code, as amended by section 401 of this Act, is further amended by adding at the end thereof the following new item:

"1546. Powers in law and equity."

COURT OF CUSTOMS AND PATENT APPEALS

Sec. 403. (a) Section 2601(a) of title 28, United States Code, is amended by adding at the end thereof the following new sentence: "If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen days after the date on which the first notice of appeal was filed."

(b) The first sentence of section 2601(b) of title 28, United States Code, is amended—

(1) by inserting "or cross appeal" immediately after "appeal" each place it appears; and

(2) by striking out "which shall include a concise statement of the errors complained of";

(c) The third sentence of section 2601(b) of title 28, United States Code, is amended by striking out "and the Secretary of the Treasury or their designees" and inserting in lieu thereof "and any named official".

(d) Section 2601(c) of title 28, United States Code, is amended by inserting immediately after the first sentence the following new sentences: "Findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the Court of International Trade to judge the credibility of the witnesses. A party may raise on appeal the question of whether the findings of fact are clearly erroneous, whether or not the party raising such question made an objection to such findings in the Court of International Trade or made a motion to amend such findings."

(e) (1) Section 2602 of title 28, United States Code, is amended to read as follows:

"§ 2602. Precedence of cases
"The following civil actions in the Court of Customs and Patent Appeals shall be given precedence, in the following order, over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way:

"(1) First, a civil action involving the exclusion of perishable merchandise or the redelivery of such merchandise.

"(2) Second, a civil action for the review of a determination under section 516A(a) (1) (B) (i) or (ii) of the Tariff Act of 1930.

"(3) Third, a civil action commenced under section 515 of the Tariff Act of 1930 involving the exclusion or redelivery of merchandise.

"(4) Fourth, a civil action commenced under section 516 or 516A of the Tariff Act of 1930, other than a civil action described in paragraph (2) of this section.

"(5) Fifth, an appeal from findings of the Secretary of Commerce provided for in headnote 6 to schedule 8, part 4, of the

Tariff Schedules of the United States (19 U.S.C. 1202)."

(2) The item relating to section 2602 in the section analysis of chapter 167 of title 28, United States Code, is amended to read as follows:

"2602. Precedence of cases."

RULES OF EVIDENCE

Sec. 404. (a) Chapter 167 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 2603. Rules of evidence

"Except as provided in section 2639 or 2641(b) of this title or in the rules prescribed by the court, the Federal Rules of Evidence shall apply in the Court of Customs and Patent Appeals in any appeal from the Court of International Trade."

(b) The section analysis of chapter 167 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"2603. Rules of evidence."

JUDICIAL CONFERENCE

Sec. 405. (a) Chapter 167 of title 28, United States Code, as amended by section 404 of this Act, is further amended by adding at the end thereof the following new section:

"§ 2604. Judicial conference

"The chief judge of the Court of Customs and Patent Appeals is authorized to summon annually the judges of such court to a judicial conference, at a time and place that such chief judge designates, for the purpose of considering the business of such court and improvements in the administration of justice in such court."

(b) The section analysis of chapter 167 of title 28, United States Code, as amended by section 404 of this Act, is further amended by adding at the end thereof the following new item:

"2604. Judicial conference."

TITLE V—TECHNICAL AND CONFORMING AMENDMENTS TO TITLE 28

Sec. 501. The following provisions, of title 28, United States Code, are amended by striking out "Customs Court" and inserting in lieu thereof "Court of International Trade":

(1) The item relating to chapter 11 in the chapter analysis of part I.

(2) The chapter heading of chapter 11.

(3) Section 253(a).

(4) Section 254.

(5) Section 255(a).

(6) Section 257.

(7) Section 292(e).

(8) Section 293(c).

(9) Section 372 (a) and (b).

(10) Section 451 (including that section as it will become effective on April 1, 1984).

(11) Section 456.

(12) Section 569(a) (including that section as it will become effective on April 1, 1984).

(13) The item relating to chapter 55 in the chapter analysis of part III.

(14) Section 605.

(15) Section 610.

(16) The chapter heading of chapter 55.

(17) Section 871.

(18) Section 872.

(19) Section 873.

(20) The item relating to chapter 95 in the chapter analysis of part IV.

(21) Section 1340.

(22) The item relating to section 1541 in the section analysis of chapter 93.

(23) The section heading for section 1541.

(24) Section 1541(b).

(25) The item relating to chapter 169 in the chapter analysis of part VI.

(26) The item relating to section 2601 in the section analysis of chapter 167.

(27) The section heading for section 2601.

(28) Section 2601 (a), (b), and (c).

Sec. 502. Section 252 of title 28, United

States Code, is amended by striking out "Judge of the Customs Court" and inserting in lieu thereof "Judges of the Court of International Trade".

Sec. 503. Section 518(a) of title 28, United States Code, is amended by inserting "and in the Court of International Trade" immediately after "Claims".

Sec. 504. Section 751 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) When the Court of International Trade is sitting in a judicial district, other than the Southern District or Eastern District of New York, the clerk of the district court of such judicial district or an authorized deputy clerk, upon the request of the chief judge of the Court of International Trade and with the approval of such district court, shall act in the district as clerk of the Court of International Trade, as prescribed by the rules and orders of the Court of International Trade for all purposes relating to the civil action then pending before such court."

Sec. 505. Section 1337 of title 28, United States Code is amended by adding at the end thereof the following new subsection:

"(c) The district courts shall not have jurisdiction under this section of any matter within the exclusive jurisdiction of the Court of International Trade under chapter 95 of this title."

Sec. 506. Section 1352 of title 28, United States Code, is amended by inserting immediately before the period at the end thereof the following: ", except matters within the jurisdiction of the Court of International Trade under section 1582 of this title".

Sec. 507. Section 1355 of title 28, United States Code, is amended by inserting immediately before the period at the end thereof the following: ", except matters within the jurisdiction of the Court of International Trade under section 1582 of this title".

Sec. 508. Section 1356 of title 28, United States Code, is amended by inserting immediately before the period at the end thereof the following: ", except matters within the jurisdiction of the Court of International Trade under section 1582 of this title".

Sec. 509. The second paragraph of section 1491 of title 28, United States Code, is amended by striking out "in suits" and inserting in lieu thereof "of any civil action within the exclusive jurisdiction of the Court of International Trade, or of any action".

Sec. 510. Section 1919 of title 28, United States Code, is amended by inserting "or the Court of International Trade" immediately after "court" the first place it appears.

Sec. 511. (a) Chapter 125 of title 28, United States Code, is amended by inserting immediately after section 1963 the following new section:

"§ 1963A. Registration of judgments of the Court of International Trade

"(a) A judgment in any civil action for the recovery of money or property entered by the Court of International Trade which has become final by appeal or expiration of time for appeal may be registered in any judicial district by filing a certified copy of such judgment. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

"(b) A certified copy of the satisfaction of any judgment in whole or in part may be registered in like manner in any district in which the judgment is a lien."

(b) The section analysis of chapter 125 of title 28, United States Code, is amended by inserting immediately after the item relating to section 1963 the following new item:

"1963A. Registration of judgments of the Court of International Trade."

Sec. 512. The first paragraph of section 2414 of title 28, United States Code, is amended by inserting "or the Court of Inter-

national Trade" immediately after "court" in the first sentence.

TITLE VI—TECHNICAL AND CONFORMING AMENDMENTS TO OTHER ACTS

SEC. 601. The following provisions of law are amended by striking out "Customs Court" and inserting in lieu thereof "Court of International Trade":

- (1) Section 6001 of title 18, United States Code.
- (2) Section 305 of the Tariff Act of 1930 (19 U.S.C. 1305).
- (3) Section 502(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b)).
- (4) Section 503 of the Tariff Act of 1930 (19 U.S.C. 1503).
- (5) Section 514 (a) and (b) of the Tariff Act of 1930 (19 U.S.C. 1514 (a) and (b)).
- (6) Section 516 (d), (e), and (f) of the Tariff Act of 1930 (19 U.S.C. 1516 (d), (e), and (f)).
- (7) Section 516A (a) (2), (c), (d), and (e) of the Tariff Act of 1930 (19 U.S.C. 1516A (a) (2), (c), (d), and (e)).
- (8) Section 528 of the Tariff Act of 1930 (19 U.S.C. 1528).
- (9) Section 308(9) of the Ethics in Government Act (28 U.S.C. app.).
- (10) Section 7443(d) of the Internal Revenue Code of 1954.
- (11) Section 906 of title 44, United States Code.

SEC. 602. Section 103(h) of the Act of March 27, 1978 (92 Stat. 170; 16 U.S.C. 791 (h)) is amended by striking out "section 250 of the Trade Act of 1974 (88 Stat. 2029)" and inserting in lieu thereof "section 284 of the Trade Act of 1974, except that such review shall be in the appropriate court of appeals of the United States, and the judgment of such court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1264 of title 28, United States Code."

SEC. 603. The first section of the Act entitled "An Act to provide the name by which the Board of General Appraisers and members thereof shall be known" approved May 28, 1926 (19 U.S.C. 405a), is repealed.

SEC. 604. Section 337(c) of the Tariff Act of 1930 (19 U.S.C. 1337(c)) is amended—

- (1) by inserting "for review in accordance with chapter 7 of title 5, United States Code" immediately before the period at the end of the fourth sentence; and
- (2) by striking out the last sentence and inserting in lieu thereof the following new sentence: "Notwithstanding the foregoing provisions of this subsection, Commission determinations under subsections (d), (e), and (f) with respect to its findings on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the amount and nature of bond, or the appropriate remedy shall be reviewable in accordance with section 706 of title 5, United States Code."

SEC. 605. (a) Section 514(a)(4) of the Tariff Act of 1930 (19 U.S.C. 1514(a)(4)) is amended to read as follows:

"(4) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, except a determination appealable under section 337 of this Act;"

(b) Section 514(a) of the Tariff Act of 1930 (19 U.S.C. 1514(a)) is further amended by striking out "section 2632 of title 28 of the United States Code within the time prescribed by section 2631" and inserting in lieu thereof "chapter 169 of title 28 of the United States Code within the time prescribed by section 2636".

SEC. 606. Section 515(b) of the Tariff Act of 1930 (19 U.S.C. 1515(b)) is amended by striking out "section 1582" and inserting in lieu thereof "section 1581".

SEC. 607. (a) Section 516(a) of the Tariff Act of 1930 is amended—

(1) by inserting "(1)" immediately before "The Secretary";

(2) by striking out "(as defined in section 771(9) (C), (D), and (E) of this Act)";

(3) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; and

(4) by inserting at the end thereof the following new paragraph:

"(2) As used in this section, the term 'interested party' means a person who is—

"(A) a manufacturer, producer, or wholesaler in the United States;

"(B) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States; or

"(C) a trade or business association a majority of whose members are manufacturers, producers, or wholesalers in the United States, of goods of the same class or kind as the designated imported merchandise."

(b) Section 516(d) of the Tariff Act of 1930 (19 U.S.C. 1516(d)) is amended by striking out "section 2632" and inserting in lieu thereof "chapter 169".

SEC. 608. (a) Section 516A(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1516A(a)(1)) is amended to read as follows:

"(1) REVIEW OF CERTAIN DETERMINATIONS.—
"(A) THIRTY-DAY REVIEW.—Within 30 days after the date of publication in the Federal Register of notice of—

"(i) a determination by the Secretary or the administering authority, under section 303(a)(3), 702(c), or 732(c) of this Act, not to initiate an investigation,

"(ii) a determination by the administering authority or the Commission, under section 751(b) of this Act, not to review an agreement or a determination based upon changed circumstances, or

"(iii) a negative determination by the Commission, under section 703(a) or 733 (a) of this Act, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation, an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

"(B) TEN-DAY REVIEW.—Within 10 days after the date of publication in the Federal Register of notice of—

"(i) a determination by the administering authority, under section 703(c) or 733 (c) of this Act, that a case is extraordinarily complicated, or

"(ii) a negative determination by the administering authority under section 703(b) or 733(b) of this Act,

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based."

(b) Section 516A(a)(3) of the Tariff Act of 1930 (19 U.S.C. 1516A(a)(3)) is amended by striking out "section 2632" and inserting in lieu thereof "chapter 169".

(c) Section 516A(c)(2) of the Tariff Act of 1930 (19 U.S.C. 1516A(c)(2)) is amended by striking out the second sentence.

(d) The second sentence of section 516A(d) of the Tariff Act of 1930 (19 U.S.C. 1516A(d)) is amended to read as follows: "The party filing the action shall notify all such interested parties of the filing of an action under this section, in the form, manner, style, and

within the time prescribed by rules of the court."

SEC. 609. Section 592(e) of the Tariff Act of 1930 (19 U.S.C. 1592(e)) is amended by striking out "(e) DISTRICT COURT PROCEEDINGS—" and all that follows through "under this section—" and inserting in lieu thereof the following:

"(e) COURT OF INTERNATIONAL TRADE PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—"

SEC. 610. Section 604 of the Tariff Act of 1930 (19 U.S.C. 1604) is amended—

(1) by striking out "every United States district attorney" and inserting in lieu thereof "the Attorney General of the United States";

(2) by inserting "or the Court of International Trade" immediately after "district court"; and

(3) by striking out "such district attorney" and inserting in lieu thereof "the Attorney General".

SEC. 611. (a) The second sentence of the second paragraph of section 641(b) of the Tariff Act of 1930 (19 U.S.C. 1641(b)) is amended by striking out "in the circuit court" and all that follows through "District of Columbia" and inserting in lieu thereof "in the Court of International Trade".

(b) Section 641(b) of the Tariff Act of 1930 (19 U.S.C. 1641(b)) is amended by striking out the next to last sentence of the second paragraph.

SEC. 612. Section 250 of the Trade Act of 1974 (19 U.S.C. 2322), and the item relating to such section in the table of contents of such Act, are repealed.

SEC. 613. (a) Title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.) is amended by redesignating section 284 as section 285 and by inserting immediately after section 283 the following new section:

"SEC. 284. JUDICIAL REVIEW.
"(a) A worker, group of workers, certified or recognized union, or authorized representative of such worker or group aggrieved by a final determination of the Secretary of Labor under section 223 of this title, a firm or its representative or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 251 of this title, or a community or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 271 of this title may, within sixty days after notice of such determination, commence a civil action in the United States Court of International Trade for review of such determination. The clerk of such court shall send a copy of the summons and the complaint in such action to the Secretary of Labor or the Secretary of Commerce, as the case may be. Upon receiving a copy of such summons and complaint, such Secretary shall promptly certify and file in such court the record on which he based such determination.

"(b) The findings of fact by the Secretary of Labor or the Secretary of Commerce, as the case may be, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to such Secretary to take further evidence, and such Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(c) The Court of International Trade shall have jurisdiction to affirm the action of the Secretary of Labor or the Secretary of Commerce, as the case may be, or to set such action aside, in whole or in part. The judgment of the Court of International Trade shall be subject to review by the United States Court of Customs and Patent Appeals,

as prescribed by the rules of such court. The judgment of the Court of Customs and Patent Appeals shall be subject to review by the Supreme Court of the United States upon certiorari as provided in section 1256 of title 28."

(B) The table of contents of the Trade Act of 1974 (19 U.S.C. 2101 et seq.) is amended by striking out the item relating to section 284 and inserting in lieu thereof the following new items:

"Sec. 284. Judicial review.

"Sec. 285. Effective date."

TITLE VII—EFFECTIVE DATES AND MISCELLANEOUS PROVISIONS

EFFECTIVE DATES

SEC. 701. (a) Except as provided in subsection (b) of this section, the provisions of any amendments made by this Act shall take effect on November 1, 1980.

(b) (1) The following sections of title 28, United States Code, shall apply with respect to civil actions commenced on or after the 90th day after the effective date of this Act:

(A) Sections 1582, 2639(a) (2), and 2640 (a) (6) as amended by sections 201 and 301 of this Act.

(B) Sections 1352, 1355, and 1356, as amended by section 506, 507, and 508 of this Act.

(2) Section 592(e) of the Tariff Act of 1930, as amended by section 609 of this Act, shall apply with respect to civil actions commenced on or after 90th day after the effective date of this Act.

TREATMENT OF REFERENCES

SEC. 702. Any reference in any statute or regulation of the United States to the United States Customs Court, the U.S. Customs Court, or the Customs Court shall be deemed to be a reference to the United States Court of International Trade.

EFFECT ON CUSTOMS COURT JUDGES

SEC. 703. (a) Except as provided in subsection (b) of this section, the amendments made by title I of this Act shall not affect the status of any individual serving as judge or chief judge of the Customs Court on the date of enactment of this Act.

(b) The requirement that a person may not continue to serve as chief judge of the Court of International Trade after having reached the age of seventy years, as set forth in the amendment made by section 101 of this Act, shall apply to any individual serving as a chief judge on or after the date of enactment of this Act.

EFFECT ON PENDING CASES

SEC. 704. Nothing in this Act shall cause the dismissal of any action commenced prior to the date of enactment of this Act under jurisdictional statutes relating to the Customs Court or the Court of Customs and Patent Appeals as in effect immediately prior to such date of enactment.

TVA LEGAL REPRESENTATION

SEC. 705. Nothing in this Act affects the authority of the Tennessee Valley Authority under the Tennessee Valley Authority Act of 1933 to represent itself by attorneys of its choosing.

The SPEAKER pro tempore. Is a second demanded?

Mr. McCLODY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Missouri (Mr. VOLKMER) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. McCLODY) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from Missouri (Mr. VOLKMER).

Mr. VOLKMER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 7540 completes a task which was begun over 10 years ago when Congress modernized the procedures of the U.S. Customs Court by means of the Customs Courts Act of 1970. At that time, it was decided to address the issues of the court's status, jurisdiction, and powers in subsequent legislation.

H.R. 7540 is that subsequent legislation. The bill creates a comprehensive system of judicial review of civil actions arising out of import transactions and the Federal statutes affecting international trade.

Existing laws pertaining to the jurisdiction of the Customs Court specifically limit the subject matter jurisdiction of the court, the class of persons with standing to institute actions, and the forms of remedies available before the court. As a consequence of these limitations, aggrieved persons have tried, with increasing frequency, to challenge administrative actions involving importations in the Federal district courts. Such actions are filed when the subject matter is not clearly assigned by law to the Customs Court; or, when the aggrieved person has no standing in the Customs Court; or, when the remedy sought is not available in the Customs Court.

When a plaintiff alleges that he has no effective access to, or cannot obtain an adequate remedy from the Customs Court, the district courts are asked, usually unsuccessfully, to take jurisdiction over the dispute under one of their general or specific jurisdictional statutes. These cases and the resulting court decisions have created much confusion for potential litigants and the courts. Thus, the uniformity required by the Constitution is provided for only in those relatively few administrative actions which are within the Customs Court's presently limited jurisdiction.

The Customs Courts Act of 1980 resolves these problems by clarifying and revising the statutes governing the Customs Court's status, jurisdiction, and powers. This bill explicitly grants all judicial powers in law and equity to the Court of International Trade, as the Customs Court is redesignated, thereby completing its full transformation to article III status. Second, H.R. 7540 re-emphasizes and clarifies Congress intent that the expertise and national jurisdiction of the Court of International Trade be utilized exclusively in the resolution of disputes arising out of import transactions. In so doing, the bill eliminates the confusion caused by the presently ill-defined division of jurisdiction between the Customs Court and the Federal district courts.

Over the years, the Federal district courts have become overworked, thus leading to significant delays in the resolution of cases. The recent increase in international trade litigation has contributed to this problem. Moreover, with the passage of the Trade Agreements Act of 1979 and the Customs Procedural Reform and Simplification Act of 1978, there has occurred an expansion of the right of judicial review for parties adversely affected by an administrative decision relating to an import trans-

action. Enactment of the Customs Courts Act of 1980 will relieve the district courts of some of their overcrowded dockets by providing that the underutilized U.S. Customs Court have exclusive jurisdiction over civil actions involving import transactions.

H.R. 7540, the Customs Courts Act of 1980, has the strong endorsement of the administration, the judiciary, the American Bar Association, the private bar, and the business community.

Mr. McCLODY. Would the gentleman from Missouri yield?

Mr. VOLKMER. I would be happy to yield to the gentleman from Illinois.

Mr. McCLODY. It is my understanding that there are several changes in H.R. 7540, as it was reported by the full Judiciary Committee. Would the gentleman be kind enough to comment on those changes?

Mr. VOLKMER. The gentleman from Illinois is correct in his understanding, and I shall be happy to comment on such changes.

These changes were accomplished through the cooperation and with the aid of the gentleman from Illinois (Mr. McCLODY) and the minority staff of the House Judiciary Committee. I am equally grateful for the guidance of the Subcommittee on Trade of the House Ways and Means Committee as to the change in the jurisdictional and standing provisions for civil actions reviewing a final administrative determination with respect to eligibility for adjustment assistance under the Trade Act of 1974.

At this time, I shall briefly discuss those amendments. The first amendment pertains to section 101 of the bill and retains the existing requirement respecting the political affiliation of the judges of the court.

The second amendment clarifies the court's jurisdiction under proposed section 1581(d) over a final determination by the Secretary of Labor regarding the eligibility of workers for adjustment assistance under the Trade Act of 1974 or by the Secretary of Commerce respecting the eligibility of firms or communities for such assistance under that act. In light of this amendment, conforming changes are made in several other sections of the bill. One change is made to proposed section 2631(d) in order to conform the standing requirement for judicial review of such determination to that permitted in the administrative review process.

The remaining four amendments are technical in nature. The initial one clarifies the authority of the court to grant monetary relief for or against private parties and the United States. The second technical amendment provides a date certain, November 1, 1980, for the effective date of this legislation.

The third technical amendment clarifies the effect of H.R. 7540 upon the right of the Tennessee Valley Authority to represent itself in the Court of International Trade.

The final amendment changes the name of the Court of Appeals for International Trade, Patents, and Trade-marks back to the Court of Customs and Patent Appeals. The amendment is necessary because of the House's passage of H.R. 3806 on September 15, 1980.

Similar legislation already has been considered by the Senate and was passed by unanimous consent on December 18, 1979.

Mr. Speaker, H.R. 7540 is necessary remedial legislation. In many respects the Customs Courts Act of 1980 continues the reforms that were initiated with the Trade Agreements Act of 1979. In so doing, this legislation clearly defines the jurisdiction and powers of the U.S. Court of International Trade so to allow it to make full use of its expertise and resources in addressing international trade litigation. With the passage of H.R. 7540 the jigsaw puzzle of statutes that govern the court's status, jurisdiction, powers, and procedures will be complete.

Accordingly, I urge the adoption of H.R. 7540, the Customs Courts Act of 1980.

□ 1550

Mr. VANIK. Mr. Speaker, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Speaker, I rise in support of H.R. 7540, the Customs Court Act of 1980. The bill represents, in many respects, the completion of reforms which were initiated with the Trade Agreements Act of 1979. The Ways and Means Trade Subcommittee, which I chair, has maintained great interest in this legislation, since it involves the major U.S. international trade statutes which come within our jurisdiction—the Trade Agreements Act of 1979, the Trade Act of 1974, and the Tariff Act of 1930.

The Customs Court Act of 1980 will equip our judicial system with the tools necessary to effectively interpret our Nation's complex laws dealing with international trade. It clarifies important jurisdictional issues, and assures meaningful access to judicial review of civil actions arising out of our import transactions.

I am grateful to the Judiciary Committee for their spirit of cooperation in considering the views of the Trade Subcommittee on H.R. 7540. Throughout the entire process of committee hearings and markups, we have worked closely on many substantive issues. For the most part, our recommendations have been followed, and our concerns have been alleviated. The Trade Subcommittee expressed particular concern with clarifying the residual jurisdiction of the new Court of International Trade, and I am happy to say that our suggestions on this matter were fully adopted. Many other provisions in this bill have been modified in a manner which accommodates the Trade Subcommittee's views, and we are grateful for these actions by the Judiciary Committee.

I would like to clarify one substantive issue in the bill, which involves proposed section 2631(d) of title 28 of the United States Code. This is a standing provision, specifying who may bring a civil action to review a final determination of either the Secretary of Labor or Secretary of Commerce with respect to eligibility for trade adjustment assistance. While the subsection governing workers' adjustment assistance limits standing to those parties that actually applied for adjustment assistance and were ag-

grieved by a final determination of the Secretary of Labor, the subsections governing adjustment assistance for firms and communities expands the standing eligibility to any other interested domestic party that is aggrieved by a final determination of the Secretary of Commerce.

My understanding is that these standing provisions maintain present administrative practice, and do not alter existing procedures in any respect. I understand further that the Departments of Labor and Commerce have no objection to these provisions.

I would like to ask the gentleman from Missouri if these understandings are correct.

Mr. VOLKMER. Mr. Speaker, I would like to reply to the gentleman from Ohio (Mr. VANIK) by saying that his understandings are correct. The answer is, yes, and I wish again to commend the gentleman from Ohio for his input in this legislation and his assistance to the Committee on the Judiciary in its consideration of this legislation.

Mr. VANIK. Mr. Speaker, I thank the gentleman from Missouri for clarifying this matter, and I urge passage of the bill.

Mr. VOLKMER. Mr. Speaker, I have no further requests for time.

Mr. McCLODY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support the enactment of H.R. 7540, the Customs Court Act of 1980, as a necessary reform of the law concerning the jurisdiction and powers of the Customs Court. It is to be hoped that this legislation will so clarify the law regarding judicial review of civil actions arising out of import transactions that we will for the first time in recent years achieve uniformity of decision-making manifestly required in this area by the public interest.

I particularly commend the decision to continue the political diversity requirement for membership on the Customs Court, a requirement which the court has had throughout its entire history. In my view, there are compelling equitable and practical reasons why we should continue to provide that no more than five of the nine judges on the court can be members of the same political party.

The diversity requirement essentially seeks to balance the process of selecting judges for the Customs Court. As we know, political considerations have always played a significant role in the selection of judicial nominees—and will, undoubtedly, play a part in the President's selection of the chief judge of the Customs Court, as he is authorized to do by this legislation. And we all know that it is customary for Presidents to look to their own political party for judicial nominees. What a diversity requirement does, however, is to ameliorate partisan considerations by requiring a President on occasion to seek a qualified candidate from outside of his own party. As a consequence, over a period of time a far larger and more diverse pool of talent would be drawn upon in making nominations. In a real sense, a diversity requirement helps depoliticize the selection process, and this has always heretofore

been a commendable aspect of Customs Court judicial nominations.

Retention of the political diversity requirement is also sound policy when we consider the fact that the Customs Court inevitably makes international economic policy, particularly in its judicial review of agency determinations relating to antidumping and countervailing duty cases. Every one of our citizens may be affected by such actions. Taken in this context, politically balanced membership will be not only more appropriate but also healthier for the American body politic.

In sum, both fairness and practicality warrant our perpetuating in this legislation a requirement which in the past has increased the breadth and improved the caliber of the Customs Court bench, thereby benefiting both the parties appearing before it and the public as a whole. And in time to come we may expect these manifold advantages will continue.

Mr. Speaker, I urge enactment of the Customs Court Act of 1980. May I add, Mr. Speaker, that if this measure should end up in a House-Senate conference, I shall count upon our House conferees to work diligently to maintain the position of the House without qualification.

● Mr. RODINO. Mr. Speaker, H.R. 7540, the Customs Courts Act of 1980, provides for significant and much needed reform of the laws governing the U.S. Customs Court.

Many complex questions have been raised over the years concerning the jurisdiction of the Customs Court, its scope of review and the type of relief the court may award. Periodically, the Congress has examined these issues and has altered the court's status, jurisdiction and powers in a manner intended to solve a specific problem or to meet a specific need at a particular time.

Since 1890, the U.S. Customs Court has been in constant evolution. In 1890, the court was an administrative unit within the Department of the Treasury, known as the Board of General Appraisers, with the responsibility of reviewing decisions by Customs officials on the classification and valuation of imported merchandise. Because customs duties were the principal source of revenue for the Government, the tariff statutes and the corresponding administrative procedures were designed to maximize the Government's ability to collect such duties with a minimal emphasis on judicial review.

In 1926, as the types of decisions relating to imports expanded, Congress replaced the outmoded Board with an article I court, the U.S. Customs Court. The 1926 legislation made no essential changes in the powers, procedures, and duties of the reconstituted Board. In fact, the court continued to function in most matters as would have its predecessor in reviewing the actions of the Bureau of Customs. This pattern continued for some 44 years, despite the fact that in 1956 Congress declared the court "to be a court established under article III of the Constitution of the United States."

In 1970, Congress recognized that the statutes governing the Custom Court's jurisdiction and procedures were out-

dated. Congress also noted that the administrative and judicial processes were unresponsive to the increased tendency of American importers and domestic manufacturers to challenge Customs decisions. The Customs Court Act of 1970 made significant procedural reforms in the workings of the Bureau of Customs and the Customs Court, but it left unresolved the substantive issues of the court's jurisdiction and powers.

With the completion of the multilateral trade negotiations in Tokyo, Congress enacted the Trade Agreements Act of 1979. That act provided for major revisions in the overall statutory structure for administrative and judicial review of decisions pertaining to imported merchandise and import transactions. Title X of the act provided for expanded responsibilities for the Customs Court by creating new causes of action that could be asserted in the court. The act further expanded the traditional notions of standing to permit parties other than importers, wholesalers, and domestic manufacturers to seek judicial review of any Government action or inaction pertaining to import transactions.

In particular, significant changes were made in the area of judicial challenges to antidumping and countervailing duty determinations. The Trade Agreements Act also authorized the court, for the first time, to issue preliminary or permanent injunctive relief in limited circumstances.

This patchwork quilt approach has made the statutes governing the court's jurisdiction and remedial powers awkward and uncoordinated. The result is a series of laws that do not always serve the public interest.

As international trade has grown in its impact on the American economy, a corresponding increase has occurred in civil litigation involving import transactions. However, despite the fact that modern day international trade litigation has become increasingly complicated, the primary statutes governing the U.S. Customs Court have not kept pace with the problems posed by such litigation. Traditionally, the majority of cases before the Customs Court pertain to classification and valuation issues, with the remainder involving challenges to antidumping and countervailing duty determinations. In almost all of the cases, the court could only agree or disagree with the decision of the administrative agency. The court could not issue money judgments or provide equitable relief. As previously stated, the Trade Agreements Act of 1979 gave the Customs Court new and increased responsibilities in the field of international trade litigation, particularly with antidumping and countervailing duty cases, but the 1979 act failed to authorize an explicit grant of all powers in law and equity. Thus, the law remains unclear on the authority of the Customs Court, a duly constituted article III court, to grant the remedy demanded by the case before it, such as mandamus or injunctive relief.

Furthermore, under current law, the jurisdiction of the Federal district courts is defined to encompass cases which may be within the jurisdiction of the U.S.

Customs Court. Since the statutes defining the jurisdiction of the Customs Court are so intricate and because international trade matters are more complex, it has become more difficult to determine, in advance, whether or not a particular case falls within the jurisdiction of the Customs Court or the district courts.

The result is inconsistency of judicial decisions. In some instances the Federal district courts have asserted jurisdiction over international trade cases, while declining to do so in other cases. Litigants proceed with some degree of uncertainty when choosing a forum for judicial relief. If an improper forum is chosen, the result may be a holding that the plaintiff is before the wrong court. A dismissal for want of jurisdiction can effectively preclude a judicial determination of the case on its merits.

Furthermore, the type of relief available depends greatly on a plaintiff's ability to persuade a court that it possesses jurisdiction over a particular case. Thus, some individuals will obtain relief which is denied others, who, by chance, select an improper forum to institute suit.

H.R. 7540 is designed to eliminate many of the problems faced by litigants in international trade cases before the Federal courts. The Customs Courts Act of 1980 creates a comprehensive system of judicial review of civil actions arising from import transactions, utilizing the specialized expertise of the U.S. Customs Court and the Court of Customs and Patent Appeals to insure a national uniformity in the judicial decisionmaking process. H.R. 7540 assures better access to the courts for such civil actions by more clearly defining the division of jurisdiction between the district courts and the Customs Court.

In addition, the Customs Courts Act of 1980 provides the Customs Court with all the necessary remedial powers in law and equity possessed by other courts established under article III of the Constitution, so that it may fashion an appropriate remedy for each and every case.

In order to reflect the expanded jurisdiction of the court, this legislation changes the name of the U.S. Customs Court to the U.S. Court of International Trade. This designation is more descriptive of the court's clarified and expanded jurisdiction and its new judicial functions and purposes relating to international trade.

The essential purpose of this legislation is best summarized by the following quote from the committee report:

(P)ersons adversely affected or aggrieved by agency actions arising out of import transactions are entitled to the same access to judicial review and judicial remedies as Congress has made available for persons aggrieved by actions of other agencies.

H.R. 7540, the Customs Courts Act of 1980, has the endorsement of:

First. The administration (the Departments of Justice, Treasury, Labor, and Commerce);

Second. The International Trade Commission;

Third. The Administrative Conference of the United States;

Fourth. The U.S. Customs Court; Fifth. The U.S. Court of Customs and Patent Appeals; Sixth. The ABA's Standing Committee on Customs Law; Seventh. The Association of the Customs Bar; Eighth. Representatives of the importers community; Ninth. Representatives of the custom-house brokers community; and Tenth. Private customs law practitioners.

H.R. 7540 incorporates many of the recommendations of the witnesses who appeared before the Judiciary Committee's Subcommittee on Monopolies and Commercial Law. Furthermore, the Judiciary Committee has engaged in a continuing dialog with the Ways and Means Committee's Subcommittee on Trade to assure that H.R. 7540 is consistent with their work in American foreign trade policy, particularly in the area of imports. As a result, H.R. 7540 is noncontroversial legislation that is satisfactory to all parties, the administration, the courts, business, labor, and the private bar.

At this time, I will highlight some of the major provisions of the legislation. Proposed section 1581 sets forth the major grants of subject matter jurisdiction to the Court of International Trade. This section makes it clear that the court has exclusive jurisdiction over any civil action against the United States, its agencies, or officers arising out of the Federal statutes governing import transactions.

Subsection (i) or proposed section 1581 plays a major role in the revised and clarified structure of the exclusive jurisdiction of the Court of International Trade. Quoting from the House report:

The Committee has included this provision in the legislation to eliminate much of the difficulty experienced by international trade litigants who in the past commenced suits in the district courts only to have those suits dismissed for want of subject matter jurisdiction. The grant of jurisdiction in subsection (i) will ensure that these suits will be heard on their merits.

Simply put, subsection (i) is the embodiment of the principle that if a cause of action involving an import transaction exists, other than as provided for in subsections (a)-(h) of proposed section 1581, then that cause of action should be instituted in the U.S. Court of International Trade rather than the Federal district courts or courts of appeals.

It should be noted that subsection (i) is not intended to permit the circumvention of the provisions of section 516A of the Tariff Act of 1930. The word "determination" in the fourth full paragraph on page 48 of the House report is intended to be construed in harmony with the preceding paragraph on that page. Therefore, the word "determination," as utilized in the fourth full paragraph, incorporates the same "preliminary administrative action(s)" referred to in the preceding paragraph.

Another essential provision in this legislation is proposed section 1585. This section removes any doubt that the Court of International Trade has authority to award the relief necessary to remedy an

alleged injury in a civil action before the court. The committee intends to make it clear that the court possesses all plenary powers in law and equity, thereby completing the full transformation of the court to article III status.

Closely related to section 1585 is proposed section 2643, which sets forth the types of relief that may be ordered by the Court of International Trade. Proposed section 2643 restates the general principle that the court may order any form of relief that it deems appropriate. However, the section also contains certain exceptions to that rule.

Subsection (c) (4) of the proposed section 2643 provides that the Court of International Trade may only grant declaratory relief in a civil action commenced pursuant to proposed section 1581(h), regarding judicial review of a ruling by the Secretary of the Treasury. On page 61 of the report, the committee stated that declaratory relief is appropriate for this type of action and to permit otherwise would "encourage persons to bring suit under proposed section 1581(h) rather than pursuing traditional methods of challenging the Secretary's ruling or a lack thereof."

The last sentence of the paragraph explaining subsection (c) (4) is partially incorrect in that it indicates that the committee "did intend to create such a major shift in trade policy." Such is not the case. The committee chose to authorize only declaratory relief in civil actions under proposed section 1581(h) because it did not desire to make such civil actions the rule rather than the exception and because it did not intend to create such a major shift in trade policy.

There is also need to clarify a possible ambiguity in the report's language on the interest provision, proposed section 2644. The report states that an order for reliquidation in accordance with the decision of the court "shall be deemed within the definition of the phrase 'money judgment' as used in this section." Rather than the phrase "money judgment," the report should have read "monetary relief as used in this section." There is no intent to change the meaning of the report but only to reflect accurately the language of the proposed section.

I wish now to comment on several of the amendments to H.R. 7540.

The first amendment pertains to section 101 of the bill and retains the political affiliation requirement of the judges of the court, as now contained in existing law, 28 U.S.C. 251(a).

The second amendment pertains to proposed section 1581(d) and the court's jurisdiction over civil actions commenced to review eligibility determinations by the Secretary of Labor and the Secretary of Commerce for adjustment assistance. The amendment conforms H.R. 7540 with the Trade Act of 1974. In so doing, the Customs Courts Act of 1980 re-emphasizes the intent of the Trade Act when it provided for judicial review of a final determination of the Secretary with respect to eligibility for adjustment assistance.

Conforming amendments are also made to proposed section 2631(d), 2636

(e), 2640(c), and 2643(c) (2), as contained in section 301 of the bill and to proposed section 284 of the Trade Act of 1974, as contained in section 613 of the bill. A final conforming amendment is made to section 103(h) of the Redwood National Park Act, to avoid disturbing the intent of that act.

With respect to the amendment to proposed section 2631(d), I offer an additional clarification. Since the filing of the report, there has been some concern over the potential ambiguity regarding those parties who have standing to seek judicial review of a final determination by the Secretary of Labor regarding eligibility of workers for adjustment assistance or the Secretary of Commerce concerning the eligibility of firms or communities for such assistance.

Standing for review of a final determination by the Secretary of Labor under section 223 of the Trade Act of 1974 will extend to "a worker, group of workers, certified or recognized union, or authorized representative of such worker or group aggrieved by a final determination." Under this language it is possible for a firm to seek judicial review of such determination as long as the firm is an "authorized representative of such worker or group."

Standing for review of a final determination by the Secretary of Commerce under section 251 of the Trade Act of 1974 will extend only to "a firm or its representative that applies for assistance under such act and is aggrieved by such final determination, or by any other interested domestic party that is aggrieved by such final determination."

Standing for review of a final determination by the Secretary of Commerce under section 271 of the Trade Act of 1974 will extend only to "a community that applies for assistance under such act and is aggrieved by such final determination, or by any other interested domestic party that is aggrieved by such final determination."

In all three instances standing for judicial review will follow that for administrative review by the particular agency in question. Furthermore, in both provisions pertaining to review of a final determination by the Secretary of Commerce, the phrase "interested domestic party" is to have the same meaning as provided for in proposed section 2631(d) in the committee report.

The next amendment clarifies the authority of the Court of International Trade to issue money judgments pursuant to proposed section 2643(a). As drafted, that section only authorizes money judgments "for or against the United States." However, by virtue of the court's jurisdiction under proposed section 1583 it is possible for one private party to seek monetary relief from another private party. Thus, there is a need to remove any doubt about the court's authority to grant such monetary relief.

The next amendment pertains to section 701, the effective date provision. The amendment strikes the current language, which provides that the legislation is effective on the date of enactment and inserts in its place a specific date, November 1, 1980. In this way all interested parties, potential litigants, the Govern-

ment and the court will be certain of the effective date of the Customs Courts Act of 1980, thereby removing any possible hardship that could be occasioned by the vagueness of the present language.

Another amendment provides a clarification of the effect of this legislation on the ability of the Tennessee Valley Authority (TVA) to represent itself by attorneys of its choosing. This maintains the state of the law relating to the TVA as established under the TVA Act of 1933.

The final amendment is a technical one striking the change in name of the Court of Customs and Patent Appeals to the Court of Appeals for International Trade, Patents and Trademarks. The retention of the original name is necessitated by the recent passage of H.R. 3806, which combines the Court of Customs and Patent Appeals and the Court of Claims into the Court of Appeals for the Federal Circuit that legislation is to become effective October 1, 1981.

In light of the real possibility of the enactment of both bills, it is unnecessary to change the name of the Court of Customs and Patent Appeals twice within a 1-year period.

In summary, H.R. 7540 offers the international trade community, as well as domestic manufacturers, consumer groups, labor unions, and other concerned citizens, a vastly improved forum for judicial review of administrative actions of the U.S. Customs Service and other Government agencies dealing with imported merchandise. The provisions of the Customs Courts Act, when coupled with the Trade Agreements Act of 1979, make it clear to those who suffer injury that they may seek redress in a court with confidence that their case will be heard on the merits and not decided upon jurisdictional grounds. Furthermore, if they are successful, they can feel confident that the Court of International Trade will be able to afford them the relief that is appropriate and necessary to make them whole.

Enactment of this legislation is a significant step in affording international trade litigants the assurance that they are before the proper forum and can obtain the necessary relief. H.R. 7540 will provide uniformity in the judicial decisionmaking process for import transactions as required under article I, section 8 of the Constitution. Most importantly, H.R. 7540 removes much, if not all, of the uncertainty surrounding the status of the U.S. Customs Court and the statutes governing its jurisdiction and remedial powers. Accordingly, I urge my colleagues to support the Customs Courts Act of 1980.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Missouri (Mr. VOLKMER) that the House suspend the rules and pass the bill, H.R. 7540, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. VOLKMER. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from fur-

ther consideration of the Senate bill (S. 1654) to improve the Federal judicial machinery by clarifying and revising certain provisions of title 28, United States Code, relating to the judiciary and judicial review of international trade matters, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1654

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Customs Courts Act of 1979".

TITLE I—PURPOSES

SEC. 101. The Congress declares that the purposes of this Act are—

(a) to provide for a comprehensive system of judicial review of civil actions arising from import transactions, utilizing, whenever possible, the specialized expertise of the United States Customs Court and Court of Customs and Patent Appeals and insuring uniformity afforded by the national jurisdiction of these courts;

(b) to assure access to judicial review of civil actions arising from import transactions, which access is not presently assured due to jurisdictional conflicts arising from the presently ill-defined division of jurisdiction between the district courts and the customs courts;

(c) to provide expanded opportunities for judicial review of civil actions arising from import transactions;

(d) to grant to the customs courts the plenary powers possessed by other courts established under Article III of the Constitution of the United States; and

(e) to change the name of the United States Customs Court to the United States Court of International Trade to be more descriptive of its expanded jurisdiction and its new judicial functions and purposes relating to international trade in the United States.

TITLE II—COMPOSITION OF THE COURT OF INTERNATIONAL TRADE AND ASSIGNMENT OF JUDGES TO OTHER COURTS

SEC. 201. The United States Customs Court shall continue as constituted on the day before the date of enactment of this Act, and shall, after the date of enactment of this Act, be known as the United States Court of International Trade.

SEC. 202. (a) Section 251 of title 28, United States Code, is amended by striking out the first and second paragraphs of such section and inserting in lieu thereof the following:

"(a) The President shall appoint, by and with the advice and consent of the Senate, nine judges who shall constitute a court of record to be known as the United States Court of International Trade. The court is a court established under Article III of the Constitution of the United States.

"(b) (1) The chief judge shall be the judge in regular active service who is senior in commission of those judges who—

"(A) are sixty-four years of age or under;

"(B) have served for at least one year as judge of the court; and

"(C) have not served previously as chief judge.

"(2) (A) In any case in which no judge meets the qualifications under paragraph (1), the youngest judge in regular active service who is sixty-five years of age or over and who has served as a judge of the court

for at least one year shall act as the chief judge.

"(B) In any case under subparagraph (A) in which there is no judge in regular active service who has served as a judge for more than one year, the judge in regular active service who is senior in commission and who has not served previously as chief judge shall act as the chief judge.

"(3) (A) Except as provided in subparagraph (C), a chief judge shall serve for a term of seven years, and may continue to serve after the expiration of such term until another judge is eligible to serve as chief judge under paragraph (1).

"(B) Except as provided in subparagraph (C), a judge acting as chief judge under subparagraph (A) or (B) of paragraph (2) shall serve until another judge is eligible to serve as chief judge under paragraph (1).

"(C) A judge may not serve or act as chief judge after attaining the age of seventy years unless no other judge is eligible to serve as chief judge under paragraph (1) or is eligible to act as chief judge under paragraph (2).

"(c) If the chief judge desires to be relieved of his duties as chief judge while retaining his active status as a judge, he may so certify to the Chief Justice of the United States, and thereafter, the chief judge of the court shall be such other judge who is qualified to serve or act as the chief judge under subsection (b)."

(b) The third paragraph of section 251 of title 28, United States Code, is amended by inserting "(d)" immediately before "The offices".

(c) The amendments made by this section to section 251 of title 28, United States Code, shall take effect on the date of enactment of this Act, except that those judges serving on the United States Customs Court on the day before the date of enactment of this Act shall continue to serve as judges of the Court of International Trade, and the chief judge of the Customs Court serving on the day before the date of enactment of this Act shall continue to serve as chief judge of the Court of International Trade until he attains the age of seventy years.

SEC. 203. (a) Section 293(b) of title 28, United States Code, is amended by striking out all that appears after "duties" and inserting in lieu thereof the following: "In any circuit, either in a court of appeals or district court, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit in which the need arises."

(b) Section 293(d) of title 28, United States Code, is amended to read as follows:

"(d) The chief judge of the Court of International Trade may, upon presentation to him of a certificate of necessity by the chief judge of the Court of Customs and Patent Appeals or the chief judge of the Court of Claims, designate and assign temporarily any judge of the Court of International Trade to serve as a judge of the Court of Customs and Patent Appeals or the Court of Claims."

TITLE III—JURISDICTION OF THE COURT OF INTERNATIONAL TRADE

SEC. 301. (a) Chapter 95 of title 28, United States Code, is amended to read as follows: "CHAPTER 95—COURT OF INTERNATIONAL TRADE

"Sec.

"1581. Civil actions against the United States.

"1582. Civil actions commenced by the United States.

"1583. Counterclaims.

"1584. Cure of defects.

"1585. Powers generally.

"§ 1581. Civil actions against the United States

"(a) (1) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced by any person whose pro-

test under the Tariff Act of 1930 has been denied, in whole or in part, by the appropriate customs officer, if the administrative decision, including the legality of all orders and findings entering into the protest, involves—

"(A) the appraised value of merchandise;

"(B) the classification, rate, and amount of duties chargeable;

"(C) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;

"(D) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody (including a notice of constructive seizure) under any provisions of the customs laws, except a determination appealable under section 337 of the Tariff Act of 1930;

"(E) the liquidation or reliquidation of an entry, or a modification thereof;

"(F) the refusal to pay a claim for drawback; or

"(G) the refusal to reliquidate an entry under section 520(c) of the Tariff Act of 1930.

"(2) Section 516A of the Tariff Act of 1930 provides the exclusive remedy for any determination subject to judicial review under such section, and such a determination is not otherwise reviewable under this subsection or any other provision of law.

"(b) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516 or 516A of the Tariff Act of 1930.

"(c) (1) After the decision of the President has been published in the Federal Register, the Court of International Trade shall have exclusive jurisdiction to review advice, findings, recommendations, and determinations of the International Trade Commission under sections 131, 201, 202, 203, 304, 406, and 503 of the Trade Act of 1974, sections 336 and 338 of the Tariff Act of 1930, and section 22 of the Agricultural Adjustment Act, solely for the purposes of determining the procedural regularity of those actions.

"(2) If no advice, findings, recommendations, or determinations have been provided to the President by the International Trade Commission, the Court of International Trade shall have exclusive jurisdiction to review any action of the commission under the sections specified in paragraph (1) of this subsection, solely for the purposes of determining the procedural regularity of those actions.

"(d) After the decision of the President has been published in the Federal Register, the Court of International Trade shall have exclusive jurisdiction to review any action of the Office of the Special Trade Representative under section 302(b) (1) or 304 of the Trade Act of 1974, solely for the purposes of determining the procedural regularity of those actions.

"(e) The Court of International Trade shall have exclusive jurisdiction of any civil action to review any determination of the Secretary of Labor or the Secretary of Commerce certifying or refusing to certify workers, communities, or businesses as eligible for adjustment assistance under the Trade Act of 1974. No injunction or writ of mandamus shall be issued in any civil action arising under this subsection.

"(f) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced by a party-at-interest to review a final determination made under section 305(b) (1) of the Trade Agreements Act of 1979.

"(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 777(c) (2) of the Tariff Act of 1930.

"(h) (1) In addition to the jurisdiction conferred upon the Court of International

Trade by subsections (a) through (g) of this section and subject to the exceptions provided in subsection (1), the Court of International Trade shall have exclusive jurisdiction over any civil action against the United States, its agencies or its officers, which—

"(A) arises directly from import transactions; and

"(B) (1) involves the Tariff Act of 1930, the Trade Expansion Act of 1962, the Trade Act of 1974, or the Trade Agreements Act of 1979; or

"(II) a provision of—

"(I) the Constitution of the United States,

"(II) a treaty of the United States,

"(III) an executive agreement executed by the President, or

"(IV) an Executive order of the President, which directly and substantially involves international trade.

"(2) Section 516A of the Tariff Act of 1930 provides the exclusive remedy for any determination subject to judicial review under such section, and such a determination is not otherwise reviewable under this subsection or any other provision of law.

"(1) (1) The Court of International Trade shall not have jurisdiction—

"(A) of any civil action arising under section 305 of the Tariff Act of 1930;

"(B) subject to the provisions of paragraph (2), to review any ruling or refusal to issue or to change a ruling relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, and similar matters issued by the Secretary of the Treasury under applicable regulations other than in connection with a civil action commenced under subsection (a) of this section; or

"(C) of any civil action with respect to any effort by the United States to recover a civil fine or penalty or to enforce a forfeiture, to recover upon a bond, or to recover customs duties, other than as specified in section 1582 of this title.

"(2) Paragraph (1) (B) shall not apply if a plaintiff demonstrates that, without a substantial doubt, (A) it would be commercially impractical to obtain judicial review under subsection (a) of this section; and (B) the plaintiff would otherwise suffer irreparable injury. If the plaintiff fulfills the conditions set forth in the preceding sentence and demonstrates that the Secretary's ruling or refusal to issue or to change a ruling is arbitrary or capricious or otherwise contrary to law, the court shall award appropriate declaratory relief.

"§ 1582. Civil actions commenced by the United States

"(a) Subject to the provisions of subsections (b) and (c) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced by the United States under section 592, 704 (1) (2), or 734 (1) (2) of the Tariff Act of 1930.

"(b) (1) Any party to a civil action described in subsection (a) who desires to have the action tried before a jury may, within 30 days after the action is commenced in the Court of International Trade, file a motion with the clerk of the court requesting a transfer of the action to an appropriate district court.

"(2) The Court of International Trade shall promptly order the action transferred to the appropriate district court if the court determines that the moving party is entitled to a trial by jury in such action.

"(c) Within 10 days after the issuance of an order of transfer under subsection (b) (2), the clerk of the Court of International Trade shall transmit all pleadings and documents to the clerk of the appropriate district court. The action shall proceed as if it had been commenced in the district court in the first

instance, and the court shall determine the matter de novo.

"(d) The relevant provisions of sections 2641 through 2665 of this title, section 592 (e) of the Tariff Act of 1930, and the Federal Rules of Evidence shall apply in any action commenced in the Court of International Trade or transferred to a district court under this section.

"§ 1583. Counterclaims

"The Court of International Trade shall have jurisdiction to render judgment upon any counterclaim asserted by the United States—

"(1) which arises out of an import transaction pending before the court;

"(2) to recover upon a bond relating to an import transaction pending before the court; or

"(3) to recover customs duties relating to an import transaction pending before the court.

"§ 1584. Cure of defects

"(a) If a civil action within the exclusive jurisdiction of the Court of International Trade is commenced in a district court, the district court shall, in the interest of justice, transfer such civil action to the Court of International Trade, where the action shall proceed as if it had been commenced in the Court of International Trade in the first instance.

"(b) If a civil action within the exclusive jurisdiction of a district court or a court of appeals is commenced in the Court of International Trade, the Court of International Trade shall, in the interest of justice, transfer such civil action to the appropriate district court or court of appeals, where the civil action shall proceed as if it had been commenced in the district court or court of appeals in the first instance.

"§ 1585. Powers generally.

"The Court of International Trade shall possess all the powers in law and equity of, or as conferred by statute upon, a district court of the United States."

"(b) The table of chapters for part IV of title 28, United States Code, is amended in the item relating to chapter 95 by striking out "Customs Court" and inserting in lieu thereof "Court of International Trade".

TITLE IV—COURT OF INTERNATIONAL TRADE PROCEDURE

SEC 401. (a) Chapter 169 of title 28, United States Code, is amended to read as follows:

"CHAPTER 169—COURT OF INTERNATIONAL TRADE PROCEDURE

"Sec.

"2631. Persons entitled to commence a civil action.

"2632. Commencement of a civil action.

"2633. Procedure and fees.

"2634. Notice.

"2635. Filing of official documents.

"2636. Time for commencement of action.

"2637. Exhaustion of administrative remedies.

"2638. New grounds in support of a civil action.

"2639. Burden of proof; evidence of value.

"2640. Scope and standard of review.

"2641. Witnesses; inspection of documents.

"2642. Analysis of imported merchandise.

"2643. Relief.

"2644. Decisions; findings of fact and conclusions of law; effect of decisions.

"2645. Retrial or rehearing.

"2646. Precedence of cases.

"§ 2631. Persons entitled to commence a civil action

"(a) A civil action contesting the denial, in whole or in part, of a protest under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed the protest under section 514 of the Tariff Act of 1930, or by

his estate, heirs, or successors or by a surety of such person in the transaction which is the subject of the protest.

"(b) A civil action contesting the denial in whole or in part, of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the domestic interested party who filed the petition or his estate, heirs, or successors.

"(c) A civil action contesting a determination listed in section 516A of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party who is a party to the administrative proceeding or his estate, heirs, or successors.

"(d) A civil action to a review a final determination made under section 305 (b) (1) of the Trade Agreements Act of 1979 may be commenced in the Court of International Trade by any party-at-interest.

"(e) A civil action involving an application for an order to make confidential information available under section 777 (c) (2) of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party who is a party to the investigation.

"(f) A civil action, other than a civil action specified in subsections (a) through (e) of this section, may be commenced in the Court of International Trade by any person adversely affected or aggrieved by an agency action within the meaning of section 702 of title 5, United States Code.

"(g) Except in civil actions commenced under section 1581 (a) of this title or section 516 of the Tariff Act of 1930, any person who would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade may, by leave of court, intervene in that civil action. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

"(h) Any person who is a party to the investigation and would be adversely affected or aggrieved by a decision in a civil action involving an order to make confidential information available under section 777 (c) (2) of the Tariff Act of 1930 may, by leave of court, intervene in that civil action.

"(i) For the purposes of this section, the term—

"(1) 'interested party' means—

"(A) a foreign manufacturer, producer, or exporter, or the United States importer, of merchandise which is the subject of an investigation under title VII of the Tariff Act of 1930, or a trade or business association the majority of the members of which are importers of such merchandise;

"(B) the government of a country in which such merchandise is produced or manufactured;

"(C) a manufacturer, producer, or wholesaler in the United States of a like product;

"(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product; and

"(E) a trade or business association the majority of whose members manufacture, produce, or wholesale a like product in the United States;

"(2) 'domestic interested party' means a party as defined in subparagraphs (C), (D), and (E) of paragraph (1);

"(3) 'party-at-interest' means—

"(A) a foreign manufacturer, producer, or exporter, or a United States importer, of merchandise which is the subject of a final determination;

"(B) a manufacturer, producer, or wholesaler in the United States of a like product;

"(C) United States members of a labor organization or other association of workers whose members are employed in the manu-

facture, production, or wholesale in the United States of a like product; and

"(D) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States; and

"(4) 'like product' means a product which is like, or in the absence of like, most similar in characteristics and uses with the article subject to an investigation under title VII of the Tariff Act of 1930 or a final determination under section 305(b)(1) of the Trade Agreements Act of 1979.

"§ 2632. Commencement of a civil action

"(a) Each civil action under section 516 of the Tariff Act of 1930 or section 1581(a) of this title shall be commenced by filing with the clerk of the Court of International Trade a summons, with the content and in the form, manner, and style prescribed by the rules of the court.

"(b) Each civil action under section 516A of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons or a summons and a complaint, as prescribed in that section, with the content and in the form, manner, and style prescribed by the rules of the court.

"(c) Except for those civil actions specified in subsections (a) and (b) of this section, all civil actions shall be commenced by filing with the clerk of the court a summons and complaint, with the content and in the form, manner, and style prescribed by the rules of the court.

"(d) The Court of International Trade may prescribe by rule that any pleading or other paper mailed by registered or certified mail properly addressed to the clerk of the court with the proper postage affixed and return receipt requested shall be deemed filed as of the date of mailing.

"§ 2633. Procedure and fees

"(a) A filing fee shall be payable upon the commencement of an action. The amount of the fee shall be fixed by the Court of International Trade, but shall be not less than \$5 nor more than the filing fee for commencing a civil action in a United States district court. The Court of International Trade may fix all other fees to be charged by the clerk of the court.

"(b) The Court of International Trade shall prescribe rules governing pleadings and other papers, including their amendment, service, and filing, and for consolidations, severances, suspension of cases, and other procedural matters.

"(c) All pleadings and other papers filed in the Court of International Trade shall be served on all parties in accordance with the rules prescribed by the court. When the United States, its agencies, or its officers are adverse parties, service of the summons shall be made upon the Attorney General and the head of the agencies whose actions are complained of, and when injunctive relief is sought, upon the named officials sought to be enjoined.

"§ 2634. Notice

"Reasonable notice of the time and place of trial or hearing before the Court of International Trade shall be given to all parties to any civil action in accordance with the rules prescribed by the court.

"§ 2635. Filing of official documents

"(a) (1) Upon service of the summons on the Secretary of the Treasury in any civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930, or the denial of a petition under section 516 of that Act, the appropriate customs officer shall forthwith transmit to the clerk of the Court of International Trade, as prescribed by its rules, and as part of the official record—

"(A) the consumption or other entry and the entry summary;

"(B) the commercial invoice;

"(C) the special customs invoice;

"(D) a copy of protest or petition;

"(E) a copy of the denial of a protest or petition in whole or in part;

"(F) any importer's exhibits;

"(G) the official and other representative samples;

"(H) any official laboratory reports; and

"(I) a copy of any bond relating to the entry.

"(2) If any of the items listed in paragraph (1) do not exist in a particular civil action, an affirmative statement to that effect shall be transmitted to the clerk of the court.

"(b) (1) In any action commenced under section 516A of the Tariff Act of 1930, within forty days or within such period of time as the Court of International Trade may specify, after service of the complaint upon the administering authority established to administer title VII of the Tariff Act of 1930 or the United States International Trade Commission, the administering authority or the commission shall transmit to the clerk of the court, as prescribed by its rules, the record which, unless otherwise stipulated by the parties, shall consist of—

"(A) a copy of all information presented to or obtained by the administering authority or the commission during the course of the administrative proceedings, including all governmental memorandums pertaining to the case and the record of ex parte meetings required to be maintained by section 777(a) (3) of the Tariff Act of 1930; and

"(B) a copy of the determination with a statement of reasons, if any, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

"(2) Any documents, comments, or information accorded confidential or privileged status and required to be transmitted to the clerk of the Court of International Trade under paragraph (1) shall be transmitted as prescribed by its rules to the clerk of the court under seal, and its confidential or privileged status shall be preserved in the litigation. Any such documents, comments, or information shall be accompanied by a non-confidential description of the nature of such confidential documents, comments, or information. The court may examine, in camera, the confidential or privileged material and may make such material available under such terms and conditions as the court may order.

"(c) Within fifteen days or within such period of time as the Court of International Trade may specify, after service of the complaint upon the administering authority or the commission in a civil action involving an application for an order to make confidential information available under section 777(c) (2) of the Tariff Act of 1930, the administering authority or the commission shall transmit, as prescribed by its rules, to the clerk of the court under seal, the confidential information involved together with the pertinent parts of the record.

"(d) (1) In any other civil action in which judicial review is based upon the record made before the agency, the agency shall, within forty days or within such time as the Court of International Trade may specify after service of the complaint upon the agency, transmit to the clerk of the court, as prescribed by its rules—

"(A) a copy of the contested determination and the findings or report upon which it is based;

"(B) a copy of any reported hearings or conferences conducted by the agency; and

"(C) any documents, comments, or other papers filed by the public, interested parties, or governments with regard to the agency's action, identifying and transmitting, under seal, any documents, comments, or other information obtained on a confidential basis, including a nonconfidential description of

the nature of such confidential documents, comments, or information.

"(2) The parties may stipulate that fewer documents, comments, or other information than that specified in paragraph (1) shall be transmitted to the court.

"(3) The confidentiality accorded such documents, comments, and information shall be preserved in the litigation, but the court may examine in camera such documents, comments, and information and may order the disclosure of such documents, comments, or information under such terms and conditions as the court deems appropriate.

"§ 2636. Time for commencement of action

"(a) A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930, is barred unless commenced in accordance with the rules of the Court of International Trade—

"(1) within one hundred and eighty days after the date of mailing of notice of denial, in whole or in part, of a protest by the Customs Service;

"(2) if no notice is mailed within the two-year period specified in section 515(a) of the Tariff Act of 1930, within one hundred and eighty days after the date of the expiration of the two-year period specified in such section; or

"(3) within one hundred and eighty days after the date of a protest by operation of law under the provisions of section 515(b) of the Tariff Act of 1930.

"(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of mailing of a notice transmitted under section 516(c) of the Tariff Act of 1930.

"(c) A civil action contesting a determination by the administering authority, under section 703(c) or 733(c) of the Tariff Act of 1930, that a case is extraordinarily complicated is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the publication of the determination in the Federal Register.

"(d) A civil action contesting a reviewable determination listed in section 516A of the Tariff Act of 1930, other than a determination under section 703(c) or 733(c) of that Act, is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of publication of the determination in the Federal Register.

"(e) A civil action involving an application for an order to make confidential information available under section 777(c) (2) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the denial of a request for confidential information.

"(f) A civil action contesting a final determination made under section 305(b) (1) of the Trade Agreements Act of 1979 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of publication of the determination in the Federal Register.

"(g) A civil action, other than an action specified in subsections (a) through (f) of this section, of which the court has jurisdiction under section 1581 of this title is barred unless commenced in accordance with the rules of the Court of International Trade within two years after the cause of action first accrues.

"§ 2637. Exhaustion of administrative remedies

"(a) A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 may be commenced only if all liquidated duties, charges, and exactions have

been paid at the time the action is commenced, except that a surety's obligation to pay such liquidated duties, charges, and exactions is limited to the sum of any bond relating to each entry included in a denied protest. If a surety commences a civil action in the Court of International Trade, the surety shall recover only the amount of the liquidated duties, charges, and exactions paid on the entries included in the action. The excess amount of any recovery shall be paid to the importer of record, or its estate, heirs, successors, or assigns.

"(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced only by a person who has first exhausted the procedures specified in that section.

"(c) In any civil action not specified in this section, the Court of International Trade shall require the exhaustion of appropriate administrative remedies.

"§ 2638. New grounds in support of a civil action

"In any case in which the denial, in whole or in part, of a protest is a precondition to the institution of a civil action in the Court of International Trade, the court, by rule, may consider any new ground in support of the civil action if the new ground—

"(1) applies to the same merchandise that was the subject of the protest; and

"(2) is related to the same administrative determinations listed in section 514 of the Tariff Act of 1930 that were contested in the protest.

"§ 2639. Burden of proof; evidence of value

"(a) In any civil action over which the Court of International Trade has jurisdiction under subsection (a) or (b) of section 1581, the determination of the Secretary of the Treasury, the administering authority, or the International Trade Commission, or their delegates, is presumed to be correct. The burden to prove otherwise shall rest upon the party challenging the determination.

"(b) Where the value of merchandise or any of its components is in issue—

"(1) reports or depositions of consuls, customs officers, and other officers of the United States, and depositions and affidavits of other persons whose attendance cannot reasonably be had may be admitted into evidence when served upon the opposing party in accordance with the rules of the Court of International Trade;

"(2) price lists and catalogs may be admitted in evidence when duly authenticated, relevant, and material; and

"(3) the value of merchandise shall be determined from the evidence in the record and that adduced at the trial, whether or not the merchandise or sample thereof is available for examination.

"(c) The provisions of subsection (a) shall not apply to any action commenced in the Court of International Trade under section 1582 of this title, unless permitted by the Federal Rules of Evidence.

"§ 2640. Scope and standard of review

"(a) The Court of International Trade shall determine the matter de novo upon the basis of the record made before the court in the following categories of civil actions:

"(1) Civil actions contesting the denial of a protest under section 515 of the Tariff Act of 1930 involving—

"(A) except to the extent judicial review is available under subsection (b) of this section in the case of a determination made reviewable under section 516A of the Tariff Act of 1930—

"(i) the appraised value of merchandise;

"(ii) the classification, rate, and amount of duties or fees chargeable;

"(iii) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury; and

"(iv) the required redelivery of imports under the terms of an entry bond or the exclusion of merchandise from entry or de-

livery under the customs laws or under an action of the Customs Service;

"(B) the refusal to pay a claim for a drawback; and

"(C) the refusal to reliquidate an entry under section 520(c) of the Tariff Act of 1930.

"(2) Civil actions commenced under section 516(c) of the Tariff Act of 1930.

"(3) Civil actions commenced under section 1581(f) of this title.

"(4) Civil actions commenced under section 1581(g) of this title.

"(5) Civil actions commenced in the Court of International Trade under section 1582 of this title.

"(b) In any civil action commenced under section 516A of the Tariff Act of 1930, the court shall review the matter as specified in subsection (b) of that section.

"(c) In any civil action commenced under subsection (c) or (d) of section 1581 of this title, the court shall review the matter as specified in those subsections.

"(d) In any civil action commenced under section 1581(e) of this title, the court shall review the matter as specified in section 250 of the Trade Act of 1974. The determination of the Secretary of Commerce under sections 251 and 271 of the Trade Act of 1974 shall be subject to judicial review in the same manner and to the same extent as provided in section 250 of the Trade Act of 1974.

"(e) In any civil action not specified in this section, the court shall review the matter as provided in section 706 of title 5, United States Code.

"§ 2641. Witnesses; inspection of documents

"(a) Except as otherwise provided by law, in any civil action in the Court of International Trade, the parties and their attorneys shall have an opportunity to introduce evidence, to hear and cross-examine the witnesses of the other party, and to inspect all samples and all papers admitted or offered as evidence under rules prescribed by the court. Except as provided in section 2639 of this title, subsection (b) of this section, or any rule prescribed by the court, the Federal Rules of Evidence shall apply to all civil actions in the Court of International Trade.

"(b) The Court of International Trade may order that in any civil action trade secrets and commercial or financial information which is privileged and confidential, or any information provided to the United States by foreign governments or foreign persons, shall not be disclosed or shall be disclosed to a party, its counsel, or any other person, only under such terms and conditions as the court may order.

"§ 2642. Analysis of imported merchandise

"The Court of International Trade may order an analysis of imported merchandise and reports thereon by laboratories or agencies of the United States.

"§ 2643. Relief

"(a) In any civil action commenced under section 1581 or 1582 of this title or in any counterclaim asserted under section 1583 of this title, the Court of International Trade may, if appropriate, enter a judgment for money for or against the United States.

"(b) In any civil action commenced under section 1581(a) of this title or section 516 of the Tariff Act of 1930, if the Court of International Trade is unable to arrive at the correct determination on the basis of the evidence presented, the court may order such further administrative or adjudicative procedures that the court deems necessary.

"(c) In any civil action involving an application for an order requiring the administering authority or to the International Trade Commission to make confidential information available under section 777(c) (2) of the Tariff Act of 1930, the court may issue an order of disclosure only with respect to the information specified in that section.

"(d) In addition to the orders specified in subsections (a), (b), and (c) of this section,

the Court of International Trade may order any form of relief which is appropriate, including, but not limited to, declaratory judgments, orders of remand, writs of mandamus, and prohibition and injunction.

"(e) The Court of International Trade may, in extraordinary circumstances, grant appropriate preliminary or permanent injunctive relief upon the request of a person who, after exhausting all appropriate administrative remedies, would have the right to commence a civil action in the Court of International Trade. In ruling upon such a request, the court shall consider, among other matters, whether the person making the request will be irreparably injured if the relief is not granted, and if so, whether the irreparable injury outweighs the effect that the issuance of the requested injunction would have upon the public interest.

"§ 2644. Decisions; findings of fact and conclusions of law; effect of decisions

"(a) A final decision of the Court of International Trade in a contested civil action or a decision granting or refusing an injunction shall be supported by—

"(1) a statement of findings of fact and conclusions of law, or

"(2) an opinion stating the reasons and facts upon which the decision is based.

"(b) Upon motion of a party, or upon its own motion, made not later than thirty days after entry of judgment, the court may amend its findings or make additional findings and may amend the decision and judgment accordingly.

"(c) A decision of the Court of International Trade is final and conclusive, unless a retrial or rehearing is granted under section 2645 of this title or an appeal is taken to the Court of Customs and Patent Appeals within the time and the manner provided in section 2601 of this title.

"§ 2645. Retrial or rehearing

"After the Court of International Trade has rendered a judgment or order the court may, upon motion of a party or upon its own motion, grant a retrial or rehearing, as the case may be. A party's motion shall be made or the court's action on its own motion shall be taken, not later than thirty days after entry of the judgment or order.

"§ 2646. Precedence of cases

"(a) A civil action involving the exclusion of perishable merchandise shall be given precedence over other civil actions pending before the Court of International Trade, and shall be assigned for hearing or trial at the earliest practicable date and expedited in every way.

"(b) Except those civil actions given precedence under subsection (a), a civil action for the review of a determination under section 516A(a) (1) (B) or under section 516A(a) (1) (E) of the Tariff Act of 1930 shall be given precedence over other civil actions pending before the court, and shall be assigned for hearing or trial at the earliest practicable date and expedited in every way.

"(c) Except those civil actions given precedence under subsection (a) or (b), a civil action involving the exclusion or redelivery or merchandise arising under section 1581 of this title or under 516 or 516A of the Tariff Act of 1930, shall be given precedence over other civil actions pending before the court, and shall be assigned for hearing or trial at the earliest practicable date and expedited in every way."

"(b) The table of chapters for part VI of title 28, United States Code, is amended in the item relating to chapter 169 by striking out "Customs Court" and inserting in lieu thereof "Court of International Trade".

TITLE V—COURT OF CUSTOMS AND PATENT APPEALS

Sec. 501. (a) Section 1541(a) of title 28, United States Code, is amended by striking out: "and from any interlocutory order grant-

ing, continuing, modifying, refusing, or dissolving an injunction, or refusing to dissolve or modify an injunction, under section 516A (c) (2) of the Tariff Act of 1930."

(b) Section 1541 is amended by adding at the end thereof the following:

"(c) The Court of Customs and Patent Appeals has exclusive jurisdiction of any appeal from an interlocutory order of the Court of International Trade granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions."

SEC. 502. (a) Section 1543 of title 28, United States Code, is amended to read as follows: "§ 1543. International Trade Commission determinations

"The Court of Customs and Patent Appeals shall have jurisdiction to review the determinations of the United States International Trade Commission made under section 337 of the Tariff Act of 1930 relating to unfair trade practices in import trade."

(b) The table of sections for chapter 93 of title 28, United States Code, is amended by amending the item relating to section 1543 to read as follows:

"1543. International Trade Commission determinations."

SEC. 503. (a) Chapter 93 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1546. Rules of evidence; powers in law and equity; exclusive jurisdiction

"(a) Except as provided in section 2639 of this title, subsection (b) of section 2641 of this title, or any rules prescribed by the Court of Customs and Patent Appeals, the Federal Rules of Evidence shall apply in the Court in any appeal from the Court of International Trade.

"(b) The Court of Customs and Patent Appeals shall have all the powers in law and equity of, or as conferred by statute upon, the courts of appeals of the United States.

"(c) The Court of Customs and Patent Appeals has exclusive jurisdiction to review—

"(1) any decision of the Secretary of the Treasury to deny or revoke a customs brokers' license under section 641(a) of the Tariff Act of 1930; and

"(2) any action challenging an order to revoke or suspend a license under section 641 (b) of the Tariff Act of 1930."

(b) The table of sections for chapter 93 of that title is amended by adding at the end thereof the following:

"1546. Rules of evidence; powers in law and equity; exclusive jurisdiction."

SEC. 504. (a) Section 2601(a) of title 28, United States Code, is amended by adding the following at the end thereof: "If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen days after the date on which the first notice of appeal was filed."

(b) The first sentence of section 2601(b) of title 28, United States Code, is amended—

(1) by inserting "or cross appeal" after "appeal" each time it appears; and

(2) by striking out "which shall include a concise statement of the errors complained of."

(c) The third sentence of section 2601(b) of title 28, United States Code, is amended by striking out "and the Secretary of the Treasury or their designees" and inserting in lieu thereof "and any named official".

(d) Section 2601(c) of title 28, United States Code is amended by inserting the following after the first sentence: "Findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the Court of International Trade to judge the credibility of the witnesses. A party may raise on appeal the question of whether findings of fact are clearly erroneous, whether or not the party raising

the questions made an objection to such findings in the Court of International Trade or made a motion to amend such findings."

SEC. 505. (a) Section 2602 of title 28, United States Code, is amended to read as follows:

"§ 2602. Precedence of cases

"(a) A civil action involving the exclusion of perishable merchandise shall be given precedence over other civil actions pending before the Court of Customs and Patent Appeals, and shall be assigned for hearing at the earliest practicable date and expedited in every way.

"(b) Except those civil actions given precedence under subsection (a), a civil action for the review of a determination under section 516A(a) (1) (B) or under section 516A (a) (1) (E) of the Tariff Act of 1930 shall be given precedence over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way.

"(c) Except those civil actions given precedence under subsection (a) or (b), a civil action involving the exclusion or redelivery of merchandise arising under section 1581 of this title or under 516 or 516A of the Tariff Act of 1930, shall be given precedence over other civil actions pending before the court, and shall be assigned for hearing at the earliest practical date and expedited in every way.

"(d) Except those civil actions given precedence under subsection (a), (b), or (c), an appeal from findings of the Secretary of Commerce provided for in headnote 6 to schedule 8, part 4, of the Tariff Schedules of the United States (19 U.S.C. 1202) shall be given precedence over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way."

(b) The item relating to section 2602 in the table of sections for chapter 167 of title 28, United States Code, is amended to read as follows:

"2602. Precedence of cases."

SEC. 506. (a) Chapter 167 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 2603. Judicial Conference

"The Court of Customs and Patent Appeals is authorized to conduct an annual judicial conference for the purposes of considering the business of the court and improvements in the administration of justice in the court."

(b) The table of contents for chapter 167 of such title is amended by adding at the end thereof the following new item:

"§ 2603. Judicial conference."

TITLE VI—CONFORMING AMENDMENTS RELATING TO THE NAME OF THE COURT

SEC. 601. Section 1 of the Act entitled "An Act to provide the name by which the Board of General Appraisers and members thereof shall hereby after be known", approved May 28, 1926 (19 U.S.C. 405(a)), is amended by striking out "Customs Court" and inserting "Court of International Trade" each time it appears.

SEC. 602. Section 305 of the Tariff Act of 1930 (19 U.S.C. 1305) is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 603. Section 502(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b)) is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 604. Section 503 of the Tariff Act of 1930 (19 U.S.C. 1503) is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 605. Section 514(a) of the Tariff Act of 1930 (19 U.S.C. 1514(a)) is amended by striking out "Customs Court" and inserting

"Court of International Trade" each time it appears.

SEC. 606. Section 516(d) of the Tariff Act of 1930 (19 U.S.C. 1516(d)) is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 607. Section 516(e) of the Tariff Act of 1930 (19 U.S.C. 1516(e)) is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 608. Section 516(f) of the Tariff Act of 1930 (19 U.S.C. 1516(f)) is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 609. Section 516A of the Tariff Act of 1930 is amended by striking out "Customs Court" and inserting "Court of International Trade" each time it appears.

SEC. 610. Section 528 of the Tariff Act of 1930 (19 U.S.C. 1528) is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 611. Section 563(a) of the Tariff Act of 1930 (19 U.S.C. 1563) is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 612. Section 7443(d) of the Internal Revenue Code of 1954 (26 U.S.C. 7443(d)) is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 613. Section 252 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 614. Section 253(a) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 615. Section 254 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade".

SEC. 616. Section 255(a) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade".

SEC. 617. (a) Section 293(b) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade".

(b) Section 293(c) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade" each time it appears.

SEC. 618. Section 569(a) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade".

SEC. 619. Section 605 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade" each time it appears.

SEC. 620. Section 871 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade".

SEC. 621. Section 873 of title 28, United States Code is amended by striking out "Customs Court" and inserting "United States Court of International Trade".

SEC. 622. Section 1340 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade".

SEC. 623. (a) Section 1541(a) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "Court of International Trade".

(b) Section 1541(b) of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade" each time it appears.

SEC. 624. Section 2601 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "United States Court of International Trade" each time it appears.

SEC. 625. The table of chapters for part I of title 28, United States Code, is amended in the item relating to chapter 11 by striking out "Customs Court" and inserting "United States Court of International Trade".

SEC. 626. The table of chapters for part III of title 28, United States Code, is amended in the item relating to chapter 55 by striking out "Customs Court" and inserting "United States Court of International Trade".

SEC. 627. (a) The section heading for section 1541 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "Court of International Trade".

(b) The table of sections for chapter 93, title 28, United States Code, is amended in the item relating to section 1541 by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 628. (a) The section heading for section 2601 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "Court of International Trade".

(b) The table of sections for chapter 167, title 28, United States Code, is amended in the item relating to section 2601 by striking out "Customs Court" and inserting "Court of International Trade".

TITLE VII—TECHNICAL AND CONFORMING AMENDMENTS

SEC. 701. Section 337(c) of the Tariff Act of 1930 is amended—

(1) by inserting immediately after "Appeals" the following: ", subject to chapter 7 of title 5, United States Code,"; and

(2) by striking out the last sentence and inserting in lieu thereof the following: "Notwithstanding the foregoing, review of commission determinations under subsection (d), (e), and (f) as to its findings on the amount and nature of bond, the appropriate remedy, or the effect of such order on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and the United States consumers, shall be reviewable only for abuse of administrative discretion."

SEC. 702. Section 516A(a)(1) of the Tariff Act of 1930 is amended by inserting "or such other time as provided by statute" immediately after "30 days".

SEC. 703. The second sentence of section 516A(c)(2) of the Tariff Act of 1930 is amended to read as follows: "In ruling upon a request for such injunctive relief, the court shall consider the factors set forth in section 2643(e) of title 28, United States Code."

SEC. 704. The second sentence of section 516A(d) of the Tariff Act of 1930 is amended to read as follows: "The party filing the action shall notify all such interested parties of the filing of an action under this section in the form, manner, style and within the time prescribed by the rules of that court."

SEC. 705. Section 592(e) of the Tariff Act of 1930 is amended in the introductory paragraph to read as follows:

"(e) COURT OF INTERNATIONAL TRADE AND DISTRICT COURT PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade or in a United States district court, under section 604 of this Act for the recovery of any monetary penalty claimed under this section, or transferred from the Court of International Trade to a district court under section 1581 of title 28, United States Code—"

SEC. 706. (a) The second sentence of the second paragraph of paragraph (b) of section 641 of the Tariff Act of 1930 is amended by striking out all that appears after "filing," and before "sixty," and inserting in lieu thereof "in the Court of Customs and Patent Appeals, within".

(b) The second paragraph of section CXCVI—1670—Part 20

641(b) of the Tariff Act of 1930 is amended by inserting the following immediately after the third sentence: "For purposes of this paragraph, all relevant rules prescribed in accordance with sections 2072 and 2112 of title 28, United States Code, apply to the Court of Customs and Patent Appeals."

SEC. 707. (a) Section 250(a) of the Trade Act of 1974 is amended by striking out "court of appeals for the circuit in which such worker or group is located or in the United States Court of Appeals for the District of Columbia Circuit" and inserting in lieu thereof "Court of International Trade".

(b)(1) Section 250(c) of the Trade Act of 1974 is amended by inserting the following immediately after the first sentence: "The judgment of the Court of International Trade shall be subject to review by the United States Court of Customs and Patent Appeals as prescribed by the rules of the Court of Customs and Patent Appeals."

(2) Section 250(c) of the Trade Act of 1974 is further amended by striking out "court" the second time it appears and inserting in lieu thereof "Court of Customs and Patent Appeals".

SEC. 708. Section 518(a) of title 28, United States Code, is amended by inserting "and in the Court of International Trade" immediately after "Claims".

SEC. 709. Section 751 of title 28, United States Code, is amended by adding at the end thereof the following:

"(f) When the Court of International Trade is sitting in a judicial district other than the Southern and Eastern Districts of New York, the clerk of that district court or an authorized deputy clerk, upon the request of the chief judge of the Court of International Trade and with the approval of that district court, shall act in the district as clerk of the Court of International Trade in accordance with the rules and orders of the Court of International Trade for all purposes relating to any case pending before the court."

SEC. 710. Section 1331(a) of title 28, United States Code, is amended by adding at the end thereof the following: "The district courts shall not possess jurisdiction under this section over any matter within the exclusive jurisdiction of the Court of International Trade."

SEC. 711. Section 1337 of title 28, United States Code, is amended by adding at the end thereof the following:

"(c) The district courts shall not possess jurisdiction under this section over any matter within the exclusive jurisdiction of the Court of International Trade."

SEC. 712. Section 1355 of title 28, United States Code, is amended by adding at the end thereof the following: "The Court of International Trade shall have jurisdiction of any such action or proceeding commenced in such court under section 1582 of this title."

SEC. 713. Section 1356 of title 28, United States Code, is amended by adding at the end thereof the following: "The Court of International Trade shall have jurisdiction of any such action or proceeding commenced in such court under section 1582 of this title."

SEC. 714. The second paragraph of section 1491 of title 28, United States Code, is amended by inserting "within the exclusive jurisdiction of the Court of International Trade, or" after "suits" the first time it appears in the first sentence.

SEC. 715. Section 1919 of title 28, United States Code, is amended by inserting "or the Court of International Trade" after "court" the first time it appears.

SEC. 716. Section 1963 of title 28, United States Code, is amended by inserting the following immediately after "district court" the first time it appears: "or in the Court of International Trade".

SEC. 717. The first paragraph of section

2414 of title 28, United States Code, is amended by inserting "or Court of International Trade" after "court" in the first sentence.

SEC. 718. (a)(1) Except as provided in paragraph (2), this Act, and the amendments made by this Act, shall become effective on the date on which title VII of the Tariff Act of 1930, as added by title I of the Trade Agreements Act of 1979, takes effect.

(2) The amendments made by section 506 of this Act shall become effective on October 1, 1980.

(b) Nothing in this Act shall cause the dismissal of any action commenced prior to the date of enactment under jurisdictional statutes relating to the United States Customs Court or the United States Court of Customs and Patent Appeals in effect before the date of enactment of this Act.

(c)(1) Except as provided in paragraph (2), in reviewing any determination made before January 1, 1980, under section 303 of the Tariff Act of 1930 or the Antidumping Act, 1921, the Court of International Trade and the Court of Customs and Patent Appeals shall base its review on the law as it existed on the date of such determination.

(2) The scope of review and procedures for such review shall be governed by the provisions of, and the amendments made by, this Act.

MOTION OFFERED BY MR. VOLKMER

Mr. VOLKMER. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. VOLKMER moves to strike out all after the enacting clause of the Senate bill, S. 1654, and to insert in lieu thereof the provisions of H.R. 7540, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

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DOCUMENTARY PRIVACY PROTECTION ACT OF 1980

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3486) to limit governmental search and seizure of materials possessed by persons involved in first amendment activities, to provide a remedy for persons aggrieved by violations of the provisions of this act, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3486

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Documentary Materials Privacy Protection Act of 1980".

UNLAWFUL ACTS

SEC. 2. (a) Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize any work product

authorization as an earmarking of funds, which would have been otherwise appropriated, for rail safety research.

Both of the original House and Senate rail safety bills contained provisions which would provide the Secretary of Transportation with the authority to issue an order to abate an emergency situation created by an unsafe condition or practice, and would provide appropriate review of such order. Currently the Secretary has the authority to issue such an order only if an unsafe piece of equipment or facility is found to create the emergency. The bill as passed by the House would expand this authority to insure that the Secretary can respond to all safety emergencies.

However, the Senate bill as originally passed included a provision which would require that the emergency order identify the conditions or practices against which the order is directed and describe the standards under which relief from such order might be obtained. This provision was important to the Senate committee, and the House has accepted it in substantial part.

In supporting such specificity accompanying an emergency order, it is not intended that, given the emergency nature of the order, the Secretary must detail each and every condition with each and every corresponding remedy. Nevertheless, due process does require that the carriers have notice of the basis for the order and the corrective result which is being sought. The Senate committee believes that an order incorporating such notice will be more effective in abating the emergency.

The bill as passed by the House yesterday also includes a House committee provision which gives a rail employee the right to bring action to compel the Secretary of Transportation to issue an emergency order where the employee shows that the Secretary has failed, "without any reasonable basis," to issue such an order, the direct result of which is exposure of the employee to "imminent physical injury." The Senate bill as originally passed did not contain a similar provision. In accepting this provision, the Senate committee intends that this provision be applicable in those egregious cases in which the Secretary has completely ignored a hazardous situation.

Sections 4 and 5 of S. 2730, as amended by the House, relate to the expansion of State participation in the rail safety programs and of State enforcement authority. In this area, while the Senate committee is not completely opposed to State participation in the safety program or to an expansion thereof, it has expressed its concern about the potential for inconsistent enforcement of safety regulations where both the States and the Federal Government are bringing enforcement actions. In addition, the committee has stated its desire to insure that the State inspection programs have adequate resources to make a positive contribution to the rail safety program.

The Senate bill, as amended on the Senate floor, granted DOT the discretion, as appropriate, to enter into agreements with States for the purposes of establish-

ing State inspection programs to enforce certain other rail safety laws beyond those pursuant to which they currently have track and freight car programs. Such discretion and oversight would insure that State programs are fully developed with sufficient funds and resources. This Senate provision was adopted by the House.

In addition, the Senate bill as amended on the Senate floor provided that the States could bring action to seek injunctive relief against a carrier for a safety violation within 15 days after receipt by DOT of notification from the State of such violation. However, to insure that State action would not duplicate or be inconsistent with DOT action, a State could not act if DOT determined in writing either that no violation has occurred or that DOT had taken other action in response to the violation. The 90-day waiting period prior to State action to assess a civil fine, which is in current law, remained unchanged. The House adopted the Senate provisions with one change: the 90-day waiting period prior to State action for civil penalties would be decreased to 60 days. It is intended that States will have such enforcement rights with regard to statutes pursuant to which they have inspection programs.

With regard to protection and rights of employees, the Senate committee agreed in substantial part to a House provision included in section 10 of S. 2730, as amended by the House. This provision would forbid a carrier from discharging or discriminating against an employee for filing a complaint, instituting a proceeding, or testifying in a proceeding relating to safety violations.

Subsection (b) of this section would prevent a carrier from discharging or discriminating against any employee for refusing to work under hazardous conditions presenting an imminent danger of death or serious injury to such employee. A refusal to work would be valid once three specific criteria are met: First, the refusal is made in good faith, and no reasonable alternative to such refusal is available; second, a reasonable person, under such circumstances, would conclude that there is a danger of death or serious injury and that there is insufficient time to eliminate the danger through regulatory channels; and third, the employee, where possible, has notified his employer of his fear and his intent to stop working. The applicable remedy for this section is back pay and/or reinstatement, where appropriate. A House provision allowing exemplary damages was opposed by the Senate committee and is not included in this bill.

Section 10(b) is based on a regulation promulgated under the Occupational Safety and Health Act (OSHA) and recently upheld by the Supreme Court in *Whirlpool Corp. v. Marshall*, U.S. —, 48 U.S.L.W. 4189 (1980). The Senate committee recognizes that under current law rail employees who are not covered by OSHA can seek similar protection through normal grievance procedures established under section 3 of the Railway Labor Act. This subsection is intended to codify the protection granted pursuant to these procedures by the law

boards and panels. It is important to note in this regard that any grievance under this section is subject to the procedures set forth in section 3 of the Railway Labor Act.

It is not intended that such a provision would allow an employee simply to refuse to work without just cause. A refusal must be made "in good faith." For example, many jobs in the rail industry involve inherently hazardous activities. Assuming appropriate protection is provided to the employee by the employer for such activities, this provision is not to be available merely because of the inherent hazardous nature of a job.

Section 11 of S. 2730, as amended by the House, would provide that safety specialist inspectors employed by DOT would receive a GS-13 rating and regular safety inspectors a GS-12 rating. This provision is in reaction to a recent downgrading of such inspector positions to GS-12 and GS-11 ratings respectively. While this provision was not in the original Senate bill as passed, the Senate committee wants to insure that there is adequate incentive to obtain rail safety inspectors. It remains concerned about reports of recruiting and morale problems in the FRA inspection program and the effect that such problems can have on the strength of the rail safety program. However, this provision is not intended to set a precedent for repeated legislative action with regard to adjustment of pay classifications.

The Senate committee has agreed to a House provision which would mandate DOT to issue within 2 years regulations, as appropriate and necessary, to insure the safe construction, maintenance, and operation of passenger equipment. While this provision does not expand DOT's current safety authority, it appropriately mandates action in an important safety area.

The bill also includes several other provisions, identical in both the Senate and the House bills, which clarify and consolidate the administrative and enforcement powers of DOT. In addition, certain studies originally included in the Senate bill relating to employee training, DOT specification 105 tank cars, and DOT's systems safety plan are included in the bill as passed by the House.

Mr. President, I urge quick action on this legislation. It is my hope that this legislation will insure a strengthened

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CUSTOMS COURT ACT

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. DeCONCINI, I ask the Chair to lay before the Senate a message

from the House of Representatives on S. 1654.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1654) entitled "An Act to improve the Federal judicial machinery by clarifying and revising certain provisions of title 28, United States Code, relating to the judiciary and judicial review of international trade matters, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "Customs Courts Act of 1980".

TITLE I—COMPOSITION OF THE COURT OF INTERNATIONAL TRADE AND ASSIGNMENT OF JUDGES TO OTHER COURTS

COMPOSITION OF COURT

SEC. 101. Section 251 of title 28, United States Code, is amended to read as follows:

"§ 251. Appointment and number of judges; offices

"(a) The President shall appoint, by and with the advice and consent of the Senate, nine judges who shall constitute a court record to be known as the United States Court of International Trade. Not more than five of such judges shall be from the same political party. The court is a court established under article III of the Constitution of the United States.

"(b) The President shall designate one of the judges of the Court of International Trade who is less than seventy years of age to serve as chief judge. The chief judge will continue to serve as chief judge until he reaches the age of seventy years and another judge is designated as chief judge, by the President. After the designation of another judge to serve as chief judge, the former chief judge may continue to serve as a judge of the court.

"(c) The offices of the Court of International Trade shall be located in New York, New York."

ASSIGNMENT OF JUDGES

SEC. 102. (a) Section 293(b) of title 28, United States Code, is amended by striking out "Customs Court" and all that follows through "need arises" and inserting in lieu thereof "Court of International Trade to perform judicial duties in any circuit, either in a court of appeals or district court, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit in which the need arises".

(b) Section 293(d) of title 28, United States Code, is amended to read as follows:

"(d) The chief judge of the Court of International Trade may, upon presentation to him of a certificate of necessity by the chief judge of the Court of Customs and Patent Appeals or the chief judge of the Court of Claims, designate and assign temporarily any judge of the Court of International Trade to serve as a judge of the Court of Customs and Patent Appeals or the Court of Claims."

TITLE II—JURISDICTION OF THE COURT OF INTERNATIONAL TRADE

JURISDICTION OF THE COURT

SEC. 201. Chapter 95 of title 28, United States Code, is amended to read as follows:

"CHAPTER 95—COURT OF INTERNATIONAL TRADE

"Sec.

"1581. Civil actions against the United States and agencies and officers thereof.

"1582. Civil actions commenced by the United States.

"1583. Counterclaims, cross-claims, and third-party actions.

"1584. Cure of defects.

"1585. Powers in law and equity.

CXXVI—1701—Part 20

"§ 1581. Civil actions against the United States and agencies and officers thereof

"(a) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930.

"(b) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516 of the Tariff Act of 1930.

"(c) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516A of the Tariff Act of 1930.

"(d) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—

"(1) any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 with respect to the eligibility of workers for adjustment assistance under such Act;

"(2) any final determination of the Secretary of Commerce under section 451 of the Trade Act of 1974 with respect to the eligibility of a firm for adjustment assistance under such Act; and

"(3) any final determination of the Secretary of Commerce under section 271 of the Trade Act of 1974 with respect to the eligibility of a community for adjustment assistance under such Act.

"(e) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review any final determination of the Secretary of the Treasury under section 305(b)(1) of the Trade Agreements Act of 1979.

"(f) The Court of International Trade shall have exclusive jurisdiction of any civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 771(c)(2) of the Tariff Act of 1930.

"(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—

"(1) any decision of the Secretary of the Treasury to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930; and

"(2) any order of the Secretary of the Treasury to revoke or suspend a customhouse broker's license under section 641(b) of the Tariff Act of 1930.

"(h) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review, prior to the importation of the goods involved, a ruling issued by the Secretary of the Treasury, or a refusal to issue or change such a ruling, relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, or similar matters, but only if the party commencing the civil action demonstrates to the court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to such importation.

"(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)-(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

"(1) revenue from imports or tonnage;

(2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;

"(3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or

"(4) administration and enforcement with

respect to the matters referred to in paragraphs (1)-(3) of this subsection and subsections (a)-(h) of this section.

"(j) The Court of International Trade shall not have jurisdiction of any civil action arising under section 305 of the Tariff Act of 1930.

"§ 1582. Civil actions commenced by the United States

"The Court of International Trade shall have exclusive jurisdiction of any civil action which arises out of an import transaction and which is commenced by the United States—

"(1) to recover a civil penalty under section 592, 704(1)(2), or 734(1)(2) of the Tariff Act of 1930;

"(2) to recover upon a bond relating to the importation of merchandise required by the laws of the United States or by the Secretary of the Treasury; or

"(3) to recover customs duties.

"§ 1583. Counterclaims, cross-claims, and third-party actions

"In any civil action in the Court of International Trade, the court shall have exclusive jurisdiction to render judgment upon any counterclaim, cross-claim, or third-party action of any party, if (1) such claim or action involves the imported merchandise that is the subject matter of such civil action, or (2) such claim or action is to recover upon a bond or customs duties relating to such merchandise.

"§ 1584. Cure of defects

"(a) If a civil action within the exclusive jurisdiction of the Court of International Trade is commenced in a district court of the United States, the district court shall, in the interest of justice, transfer such civil action to the Court of International Trade, where such action shall proceed as if it had been commenced in the Court of International Trade in the first instance.

"(b) If a civil action within the exclusive jurisdiction of a district court, a court of appeals, or the Court of Customs and Patent Appeals is commenced in the Court of International Trade, the Court of International Trade shall, in the interest of justice, transfer such civil action to the appropriate district court or court of appeals or to the Court of Customs and Patent Appeals where such action shall proceed as if it had been commenced in such court in the first instance.

"§ 1585. Powers in law and equity

"The Court of International Trade shall possess all the powers in law and equity of, or as conferred by statute upon, a district court of the United States."

TITLE III—COURT OF INTERNATIONAL TRADE PROCEDURE

COURT PROCEDURE

SEC. 301. Chapter 169 of title 28, United States Code, is amended to read as follows:

"CHAPTER 169—COURT OF INTERNATIONAL TRADE PROCEDURE

"Sec.

"2631. Persons entitled to commence a civil action.

"2632. Commencement of a civil action.

"2633. Procedure and fees.

"2634. Notice.

"2635. Filing of official documents.

"2636. Time for commencement of action.

"2637. Exhaustion of administrative remedies.

"2638. New grounds in support of a civil action.

"2639. Burden of proof; evidence of value.

"2640. Scope and standard of review.

"2641. Witnesses; inspection of documents.

"2642. Analysis of imported merchandise.

"2643. Relief.

"2644. Interest.

"2645. Decisions.

"2646. Retrial or rehearing.

"2647. Precedence of cases.

“§2631. Persons entitled to commence a civil action

“(a) A civil action contesting the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed the protest pursuant to section 514 of such Act, or by a surety on the transaction which is the subject of the protest.

“(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed such petition.

“(c) A civil action contesting a determination listed in section 516A of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party who was a party to the proceeding in connection with which the matter arose.

“(d) (1) A civil action to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 with respect to the eligibility of workers for adjustment assistance under such Act may be commenced in the Court of International Trade by a worker, group of workers, certified or recognized union, or authorized representative of such worker or group that applies for assistance under such Act and is aggrieved by such final determination.

“(2) A civil action to review any final determination of the Secretary of Commerce under section 251 of the Trade Act of 1974 with respect to the eligibility of a firm for adjustment assistance under such Act may be commenced in the Court of International Trade by a firm or its representative that applies for assistance under such Act and is aggrieved by such final determination, or by any other interested domestic party that is aggrieved by such final determination.

“(3) A civil action to review any final determination of the Secretary of Commerce under section 271 of the Trade Act of 1974 with respect to the eligibility of a community for adjustment assistance under such Act may be commenced in the Court of International Trade by a community that applies for assistance under such Act and is aggrieved by such final determination, or by any other interested domestic party that is aggrieved by such final determination.

“(e) A civil action to review a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 may be commenced in the Court of International Trade by any person who was a party-at-interest with respect to such determination.

“(f) A civil action involving an application for the issuance of an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party whose application for disclosure of such confidential information was denied under section 777(c)(1) of such Act.

“(g) (1) A civil action to review any decision of the Secretary of the Treasury to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose license was denied or revoked.

“(2) A civil action to review any order of the Secretary of the Treasury to revoke or suspend a customhouse broker's license under section 641(b) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose license was revoked or suspended.

“(h) A civil action described in section 1581(h) of this title may be commenced in the Court of International Trade by the person who would have standing to bring a civil action under section 1581(a) of this title if he imported the goods involved and filed a protest which was denied, in whole

or in part under section 515 of the Tariff Act of 1930.

“(i) Any civil action of which the Court of International Trade has jurisdiction, other than an action specified in subsections (a)–(h) of this section, may be commenced in the court by any person adversely affected or aggrieved by agency action within the meaning of section 702 of title 5.

“(j) (1) Any person who would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade may, by leave of court, intervene in such action, except that—

“(A) no person may intervene in a civil action under section 515 or 516 of the Tariff Act of 1930;

“(B) in a civil action under section 516A of the Tariff Act of 1930, only an interested party who was a party to the proceeding in connection with which the matter arose may intervene, and such person may intervene as a matter of right; and

“(C) in a civil action under section 777(c)(2) of the Tariff Act of 1930, only a person who was a party to the investigation may intervene, and such person may intervene as a matter of right.

“(2) In those civil actions in which intervention is by leave of court, the Court of International Trade shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

“(k) In this section—

“(1) ‘interested party’ has the meaning given such term in section 771(9) of the Tariff Act of 1930; and

“(2) ‘party-at-interest’ means—

“(A) a foreign manufacturer, producer, or exporter, or a United States importer, of merchandise which is the subject of a final determination under section 305(b)(1) of the Trade Agreements Act of 1979;

“(B) a manufacturer, producer, or wholesaler in the United States of a like product;

“(C) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product; and

“(D) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

“§2632. Commencement of a civil action

“(a) Except for civil actions specified in subsections (b) and (c) of this section, a civil action in the Court of International Trade shall be commenced by filing concurrently with the clerk of the court a summons and complaint, with the content and in the form, manner, and style prescribed by the rules of the court.

“(b) A civil action in the Court of International Trade under section 515 or section 516 of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons, with the content and in the form, manner, and style prescribed by the rules of the court.

“(c) A civil action in the Court of International Trade under section 516A of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons or a summons and a complaint, as prescribed in such section, with the content and in the form, manner, and style prescribed by the rules of the court.

“(d) The Court of International Trade may prescribe by rule that any summons, pleading, or other paper mailed by registered or certified mail properly addressed to the clerk of the court with the proper postage affixed and return receipt requested shall be deemed filed as of the date of mailing.

“§2633. Procedure and fees

“(a) A filing fee shall be payable to the clerk of the Court of International Trade upon the commencement of a civil action

in such court. The amount of the fee shall be prescribed by the rules of the court, but shall be not less than \$5 nor more than the filing fee for commencing a civil action in a district court of the United States. The court may fix all other fees to be charged by the clerk of the court.

“(b) The Court of International Trade shall prescribe rules governing the summons, pleadings, and other papers, for their amendment, service, and filing, for consolidations, severances, suspensions of cases, and for other procedural matters.

“(c) All summons, pleadings, and other papers filed in the Court of International Trade shall be served on all parties in accordance with rules prescribed by the court. When the United States, its agencies, or its officers are adverse parties, service of the summons shall be made upon the Attorney General and the head of the Government agency whose action is being contested. When injunctive relief is sought, the summons, pleadings, and other papers shall also be served upon the named officials sought to be enjoined.

“§2634. Notice

“Reasonable notice of the time and place of trial or hearing before the Court of International Trade shall be given to all parties to any civil action, as prescribed by the rules of the court.

“§2635. Filing of official documents

“(a) (1) Upon service of the summons on the Secretary of the Treasury in any civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the appropriate customs officer shall forthwith transmit to the clerk of the Court of International Trade, as prescribed by its rules, and as a part of the official record—

“(A) the consumption or other entry and the entry summary;

“(B) the commercial invoice;

“(C) the special customs invoice;

“(D) a copy of the protest or petition;

“(E) a copy of the denial, in whole or in part, of the protest or petition;

“(F) the importer's exhibits;

“(G) the official and other representative samples;

“(H) any official laboratory reports; and

“(I) a copy of any bond relating to the entry.

“(2) If any of the items listed in paragraph (1) of this subsection do not exist in a particular civil action, an affirmative statement to that effect shall be transmitted to the clerk of the court.

“(b) (1) In any civil action commenced in the Court of International Trade under section 516A of the Tariff Act of 1930, within forty days or within such other period of time as the court may specify, after the date of service of a complaint on the administering authority established to administer title VII of the Tariff Act of 1930 or the United States International Trade Commission, the administering authority or the Commission shall transmit to the clerk of the court the record of such action, as prescribed by the rules of the court. The record shall, unless otherwise stipulated by the parties, consist of—

“(A) a copy of all information presented to or obtained by the administering authority or the Commission during the course of the administrative proceedings, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be maintained by section 777(a)(3) of the Tariff Act of 1930; and

“(B) (i) a copy of the determination and the facts and conclusions of law upon which such determination was based, (ii) all transcripts or records of conferences or hearings, and (iii) all notices published in the Federal Register.

“(2) The administering authority or the Commission shall identify and transmit

under seal to the clerk of the court any document, comment, or information that is accorded confidential or privileged status by the Government agency whose action is being contested and that is required to be transmitted to the clerk under paragraph (1) of this subsection. Any such document, comment, or information shall be accompanied by a nonconfidential description of the nature of the material being transmitted. The confidential or privileged status of such material shall be preserved in the civil action, but the court may examine the confidential or privileged material in camera and may make such material available under such terms and conditions as the court may order.

"(c) Within fifteen days, or within such other period of time as the Court of International Trade may specify, after service of a summons and complaint in a civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c) (2) of the Tariff Act of 1930, the administering authority or the Commission shall transmit under seal to the clerk of the Court of International Trade, as prescribed by its rules, the confidential information involved, together with pertinent parts of the record. Such information shall be accompanied by a nonconfidential description of the nature of the information being transmitted. The confidential status of such information shall be preserved in the civil action, but the court may examine the confidential information in camera and may make such information available under a protective order consistent with section 777(c) (2) of the Tariff Act of 1930.

"(d) (1) In any other civil action in the Court of International Trade in which judicial review is to proceed upon the basis of the record made before an agency, the agency shall, within forty days or within such other period of time as the court may specify, after the date of service of the summons and complaint upon the agency, transmit to the clerk of the court, as prescribed by its rules—

"(A) a copy of the contested determination and the findings or report upon which such determination was based;

"(B) a copy of any reported hearings or conferences conducted by the agency; and

"(C) any documents, comments, or other papers filed by the public, interested parties, or governments with respect to the agency's action.

"(2) The agency shall identify and transmit under seal to the clerk of the court any document, comment, or other information that was obtained on a confidential basis and that is required to be transmitted to the clerk under paragraph (1) of this subsection. Any such document, comment, or information shall include a nonconfidential description of the nature of the material being transmitted. The confidential or privileged status of such material shall be preserved in the civil action, but the court may examine such material in camera and may make such material available under such terms and conditions as the court may order.

"(3) The parties may stipulate that fewer documents, comments, or other information than those specified in paragraph (1) of this subsection shall be transmitted to the clerk of the court.

"§ 2636. Time for commencement of action

"(a) A civil action contesting the denial, in whole or in part, of a protest under section 515 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade—

"(1) within one hundred and eighty days after the date of mailing of notice of denial of a protest under section 515(a) of such Act; or

"(2) within one hundred and eighty days after the date of denial of a protest by operation of law under the provisions of section 515(b) of such Act.

"(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of mailing of a notice pursuant to section 516(c) of such Act.

"(c) A civil action contesting a reviewable determination listed in section 516A of the Tariff Act of 1930, other than a determination under section 703(b), 703(c), 733(b), or 733(c) of such Act, is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the publication of such determination in the Federal Register.

"(d) (1) A civil action contesting a determination by the administering authority under section 703(c) or 733(c) of the Tariff Act of 1930 that a case is extraordinarily complicated is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the publication of such determination in the Federal Register.

"(2) A civil action contesting a negative determination by the administering authority under section 703(b) or 733(b) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the publication of such determination in the Federal Register.

"(e) A civil action contesting a final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 or a final determination of the Secretary of Commerce under section 251 or section 271 of such Act is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of notice of such determination.

"(f) A civil action contesting a final determination made under section 305(b) (1) of the Trade Agreements Act of 1979 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the publication of such determination in the Federal Register.

"(g) A civil action involving an application for the issuance of an order making confidential information available under section 777(c) (2) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the denial of the request for such confidential information.

"(h) A civil action contesting the denial or revocation by the Secretary of the Treasury of a customhouse broker's license under section 641(a) of the Tariff Act of 1930 or the revocation or suspension by such Secretary of a customhouse broker's license under section 641(b) of such Act is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of the entry of the decision or order of such Secretary.

"(i) A civil action of which the Court of International Trade has jurisdiction under section 1581 of this title, other than an action specified in subsections (a)–(h) of this section, is barred unless commenced in accordance with the rules of the court within two years after the cause of action first accrues.

"§ 2637. Exhaustion of administrative remedies

"(a) A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade only if all liquidated duties, charges, or exactions have been paid at the time the action is commenced, except

that a surety's obligation to pay such liquidated duties, charges, or exactions is limited to the sum of any bond related to each entry included in the denied protest.

"(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade only by a person who has first exhausted the procedures set forth in such section.

"(c) A civil action described in section 1581(h) of this title may be commenced in the Court of International Trade prior to the exhaustion of administrative remedies if the person commencing the action makes the demonstration required by such section.

"(d) In any civil action not specified in this section, the Court of International Trade shall, where appropriate, require the exhaustion of administrative remedies.

"§ 2638. New grounds in support of a civil action

"In any civil action under section 515 of the Tariff Act of 1930 in which the denial, in whole or in part, of a protest is a precondition to the commencement of a civil action in the Court of International Trade, the rule, may consider any new ground in support of the civil action if such new ground—

"(1) applies to the same merchandise that was the subject of the protest; and

"(2) is related to the same administrative decision listed in section 514 of the Tariff Act of 1930 that was contested in the protest.

"§ 2639. Burden of proof; evidence of value

"(a) (1) Except as provided in paragraph (2) of this subsection, in any civil action commenced in the Court of International Trade under section 515, 516, or 516A of the Tariff Act of 1930, the decision of the Secretary of the Treasury, the administering authority, or the International Trade Commission is presumed to be correct. The burden of proving otherwise shall rest upon the party challenging such decision.

"(2) The provisions of paragraph (1) of this subsection shall not apply to any civil action commenced in the Court of International Trade under section 1582 of this title.

"(b) In any civil action described in section 1581(h) of this title, the person commencing the action shall have the burden of making the demonstration required by such section by clear and convincing evidence.

"(c) Where the value of merchandise or any of its components is in issue in any civil action in the Court of International Trade—

"(1) reports or depositions of consuls, customs officers, and other officers of the United States, and depositions and affidavits of other persons whose attendance cannot reasonably be had, may be admitted into evidence when served upon the opposing party as prescribed by the rules of the court; and

"(2) price lists and catalogs may be admitted in evidence when duly authenticated, relevant, and material.

"§ 2640. Scope and standard of review

"(a) The Court of International Trade shall make its determinations upon the basis of the record made before the court in the following categories of civil actions:

"(1) Civil actions contesting the denial of a protest under section 515 of the Tariff Act of 1930.

"(2) Civil actions commenced under section 516 of the Tariff Act of 1930.

"(3) Civil actions commenced to review a final determination made under section 305(b) (1) of the Trade Agreements Act of 1979.

"(4) Civil actions commenced under section 777(c) (2) of the Tariff Act of 1930.

"(5) Civil actions commenced to review

any decision of the Secretary of the Treasury to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930.

"(6) Civil actions commenced under section 1582 of this title.

"(b) In any civil action commenced in the Court of International Trade under section 516A of the Tariff Act of 1930, the court shall review the matter as specified in subsection (b) of such section.

"(c) In any civil action commenced in the Court of International Trade to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 or any final determination of the Secretary of Commerce under section 251 or section 271 of such Act, the court shall review the matter as specified in section 284 of such Act.

"(d) In any civil action not specified in this section, the Court of International Trade shall review the matter as provided in section 706 of title 5.

"§ 2641. Witnesses; inspection of documents

"(a) Except as otherwise provided by law, in any civil action in the Court of International Trade, each party and its counsel shall have an opportunity to introduce evidence, to hear and cross-examine the witnesses of the other party, and to inspect all samples and papers admitted or offered as evidence, as prescribed by the rules of the court. Except as provided in section 2639 of this title, subsection (b) of this section, or the rules of the court, the Federal Rules of Evidence shall apply to all civil actions in the Court of International Trade.

"(b) The Court of International Trade may order that trade secrets and commercial or financial information which is privileged and confidential, or any information provided to the United States by any foreign government or foreign person, may be disclosed to a party, its counsel, or any other person under such terms and conditions as the court may order.

"§ 2642. Analysis of imported merchandise

"The Court of International Trade may order an analysis of imported merchandise and reports thereon by laboratories or agencies of the United States.

"§ 2643. Relief

"(a) The Court of International Trade may enter a money judgment—

"(1) for or against the United States in any civil action commenced under section 1581 or 1582 of this title; and

"(2) for or against the United States or any other party in any counterclaim, cross-claim, or third-party action under section 1583 of this title.

"(b) If the Court of International Trade is unable to determine the correct decision on the basis of the evidence presented in any civil action, the court may order a retrial or rehearing for all purposes, or may order such further administrative or adjudicative procedures as the court considers necessary to enable it to reach the correct decision.

"(c) (1) Except as provided in paragraph (2), (3), and (4) of this subsection, the Court of International Trade may, in addition to the orders specified in subsections (a) and (b) of this section, order any other form of relief that is appropriate in a civil action, including, but not limited to, declaratory judgments, orders of remand, injunctions, and writs of mandamus and prohibition.

"(2) The Court of International Trade may not grant an injunction or issue a writ of mandamus in any civil action commenced to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974, or any final determination of the Secretary of Commerce under section 251 or section 271 of such Act.

"(3) In any civil action involving an ap-

plication for the issuance of an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c) (2) of the Tariff Act of 1930, the Court of International Trade may issue an order of disclosure only with respect to the information specified in such section.

"(4) In any civil action described in section 1581(h) of this title, the Court of International Trade may only order the appropriate declaratory relief.

"(d) If a surety commences a civil action in the Court of International Trade, such surety shall recover only the amount of the liquidated duties, charges, or exactions paid on the entries included in such action. The excess amount of any recovery shall be paid to the importer of record.

"§ 2644. Interest

"If, in a civil action in the Court of International Trade under section 515 of the Tariff Act of 1930, the plaintiff obtains monetary relief by a judgment or under a stipulation agreement, interest shall be allowed at an annual rate established under section 6621 of the Internal Revenue Code of 1954. Such interest shall be calculated from the date of the filing of the summons in such action to the date of the refund.

"§ 2645. Decisions

"(a) A final decision of the Court of International Trade in a contested civil action or a decision granting or refusing a preliminary injunction shall be supported by—

"(1) a statement of findings of fact and conclusions of law; or

"(2) an opinion stating the reasons and facts upon which the decision is based.

"(b) After the Court of International Trade has rendered a judgment, the court may, upon the motion of a party or upon its own motion, amend its findings or make additional findings and may amend the decision and judgment accordingly. A motion of a party or the court shall be made not later than thirty days after the date of entry of the judgment.

"(c) A decision of the Court of International Trade is final and conclusive, unless a retrial or rehearing is granted pursuant to section 2646 of this title or an appeal is taken to the Court of Customs and Patent Appeals within the time and in the manner provided in section 2601 of this title.

"§ 2646. Retrial or rehearing

"After the Court of International Trade has rendered a judgment or order, the court may, upon the motion of a party or upon its own motion, grant a retrial or rehearing, as the case may be. A motion of a party or the court shall be made not later than thirty days after the date of entry of the judgment or order.

"§ 2647. Precedence of cases

"The following civil actions in the Court of International Trade shall be given precedence, in the following order, over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way:

"(1) First, a civil action involving the exclusion of perishable merchandise or the redelivery of such merchandise.

"(2) Second, a civil action for the review of a determination under section 516A(a) (1) (B) (i) or (ii) of the Tariff Act of 1930.

"(3) Third, a civil action commenced under section 515 of the Tariff Act of 1930 involving the exclusion or redelivery of merchandise.

"(4) Fourth, a civil action commenced under section 516 or 516A of the Tariff Act of 1930, other than a civil action described in paragraph (2) of this section."

JURY TRIALS

SEC. 302. (a) Chapter 121 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1876. Trial by jury in the Court of International Trade

"(a) In any civil action in the Court of International Trade which is to be tried before a jury, the jury shall be selected in accordance with the provisions of this chapter and under the procedures set forth in the jury selection plan of the district court for the judicial district in which the case is to be tried.

"(b) Whenever the Court of International Trade conducts a jury trial—

"(1) the clerk of the district court for the judicial district in which the Court of International Trade is sitting, or an authorized deputy clerk, shall act as clerk of the Court of International Trade for the purposes of selecting and summoning the jury;

"(2) the qualifications for jurors shall be the same as those established by section 1865(b) of this title for jurors in the district courts of the United States;

"(3) each party shall be entitled to challenge jurors in accordance with section 1870 of this title; and

"(4) jurors shall be compensated in accordance with section 1871 of this title."

(b) The section analysis for chapter 121 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1876. Trial by jury in the Court of International Trade."

(c) Section 1862 of title 28, United States Code, is amended by inserting "or in the Court of International Trade" immediately after "United States".

TITLE IV—COURT OF CUSTOMS AND PATENT APPEALS

JURISDICTION OF THE COURT

SEC. 401. (a) (1) Section 1541(a) of title 28, United States Code, is amended to read as follows:

"(a) The Court of Customs and Patent Appeals shall have exclusive jurisdiction of appeals from all final decisions of the Court of International Trade."

(2) Section 1541 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The Court of Customs and Patent Appeals shall have exclusive jurisdiction of appeals from interlocutory orders of the Court of International Trade granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions."

(b) (1) Section 1543 of title 28, United States Code, is amended to read as follows:

"§ 1543. International Trade Commission determinations

"The Court of Customs and Patent Appeals shall have jurisdiction to review the final determination of the United States International Trade Commission made under section 337 of the Tariff Act of 1930 relating to unfair trade practices in import trade."

(2) The item relating to section 1543 in the section analysis of chapter 93 of title 28, United States Code, is amended to read as follows:

"1543. International Trade Commission determinations."

POWERS OF THE COURT

SEC. 402. (a) Chapter 93 of title 28, United States Code, as amended by section 401 of this Act, is further amended by adding at the end thereof the following new section:

"§ 1543. Powers in law and equity
"The Court of Customs and Patent Appeals shall have all the powers in law and equity of, or as conferred by statute upon, a court of appeals of the United States."

(b) The section analysis of chapter 93 of title 28, United States Code, as amended by section 401 of this Act, is further amended by adding at the end thereof the following new item:

"§ 1546. Powers in law and equity."

COURT OF CUSTOMS AND PATENT APPEALS

SEC. 403. (a) Section 2601(a) of title 28, United States Code, is amended by adding at the end thereof the following new sentence: "If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen days after the date on which the first notice of appeal was filed."

(b) The first sentence of section 2601(b) of title 28, United States Code, is amended—

(1) by inserting "or cross appeal" immediately after "appeal" each place it appears; and

(2) by striking out "which shall include a concise statement of the errors complained of".

(c) The third sentence of section 2601(b) of title 28, United States Code, is amended by striking out "and the Secretary of the Treasury or their designees" and inserting in lieu thereof "and any named official".

(d) Section 2601(c) of title 28, United States Code, is amended by inserting immediately after the first sentence the following new sentences: "Findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the Court of International Trade to judge the credibility of the witnesses. A party may raise on appeal the question of whether the findings of fact are clearly erroneous, whether or not the party raising such question made an objection to such findings in the Court of International Trade or made a motion to amend such findings."

(e) (1) Section 2602 of title 28, United States Code, is amended to read as follows: "§ 2602. Precedence of cases

"The following civil action in the Court of Customs and Patent Appeals shall be given precedence, in the following order, over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way:

"(1) First, a civil action involving the exclusion of perishable merchandise or the redelivery of such merchandise.

"(2) Second, a civil action for the review of a determination under section 516A(a)(1) (B) (1) or (11) of the Tariff Act of 1930.

"(3) Third, a civil action commenced under section 516 of the Tariff Act of 1930 involving the exclusion or redelivery of merchandise.

"(4) Fourth, a civil action commenced under section 516 or 516A of the Tariff Act of 1930, other than a civil action described in paragraph (2) of this section.

"(5) Fifth, an appeal from findings of the Secretary of Commerce provided for in headnote 6 to schedule 8, part 4, of the Tariff Schedules of the United States (19 U.S.C. 1202)".

(2) The item relating to section 2602 in the section analysis of chapter 167 of title 28, United States Code, is amended to read as follows:

"2602. Precedence of cases."

RULES OF EVIDENCE

SEC. 404. (a) Chapter 167 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 2603. Rules of evidence

"Except as provided in section 2639 or 2641(b) of this title or in the rules prescribed by the court, the Federal Rules of Evidence shall apply in the Court of Customs and Patent Appeals in any appeal from the Court of International Trade."

(b) The section analysis of chapter 167 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"2603. Rules of evidence."

JUDICIAL CONFERENCE

SEC. 405. (a) Chapter 167 of title 28, United States Code, as amended by section 404 of

this Act, is further amended by adding at the end thereof the following new section:

"§ 2604. Judicial conference

"The chief judge of the Court of Customs and Patent Appeals is authorized to summon annually the judges of such court to a judicial conference, at a time and place that such chief judge designates, for the purpose of considering the business of such court and improvements in the administration of justice in such court."

(b) The section analysis of chapter 167 of title 28, United States Code, as amended by section 404 of this Act, is further amended by adding at the end thereof the following new item:

"2604. Judicial conference."

TITLE V—TECHNICAL AND CONFORMING AMENDMENTS TO TITLE 28

SEC. 501. The following provisions of title 28, United States Code, are amended by striking out "Customs Court" and inserting in lieu thereof "Court of International Trade":

(1) The item relating to chapter 11 in the chapter analysis of part I.

(2) The chapter heading of chapter 11.

(3) Section 253(a).

(4) Section 254.

(5) Section 255(a).

(6) Section 257.

(7) Section 292(e).

(8) Section 293(c).

(9) Section 372 (a) and (b).

(10) Section 451 (including that section as it will become effective on April 1, 1984).

(11) Section 456.

(12) Section 569(a) (including that section as it will become effective on April 1, 1984).

(13) The item relating to chapter 55 in the chapter analysis of part III.

(14) Section 605.

(15) Section 610.

(16) The chapter heading of chapter 55.

(17) Section 871.

(18) Section 872.

(19) Section 873.

(20) The item relating to chapter 95 in the chapter analysis of part IV.

(21) Section 1340.

(22) The item relating to section 1541 in the section analysis of chapter 93.

(23) The section heading for section 1541.

(24) Section 1541(b).

(25) The item relating to chapter 169 in the chapter analysis of part VI.

(26) The item relating to section 2601 in the section analysis of chapter 167.

(27) The section heading for section 2601.

(28) Section 2601 (a), (b), and (c).

SEC. 502. Section 252 of title 28, United States Code, is amended by striking out "Judge of the Customs Court" and inserting in lieu thereof "Judges of the Court of International Trade".

SEC. 503. Section 518(a) of title 28, United States Code, is amended by inserting "and in the Court of International Trade" immediately after "Claims".

SEC. 504. Section 751 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) When the Court of International Trade is sitting in a judicial district, other than the Southern District or Eastern District of New York, the clerk of the district court of such judicial district or an authorized deputy clerk, upon the request of the chief judge of the Court of International Trade and with the approval of such district court, shall act in the district as clerk of the Court of International Trade, as prescribed by the rules and orders of the Court of International Trade for all purposes relating to the civil action then pending before such court."

SEC. 505. Section 1337 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The district courts shall not have

jurisdiction under this section of any matter within the exclusive jurisdiction of the Court of International Trade under chapter 95 of this title."

SEC. 506. Section 1352 of title 28, United States Code, is amended by inserting immediately before the period at the end thereof the following: ", except matters within the jurisdiction of the Court of International Trade under section 1582 of this title".

SEC. 507. Section 1355 of title 28, United States Code, is amended by inserting immediately before the period at the end thereof the following: ", except matters within the jurisdiction of the Court of International Trade under section 1582 of this title".

SEC. 508. Section 1356 of title 28, United States Code, is amended by inserting immediately before the period at the end thereof the following: ", except matters within the jurisdiction of the Court of International Trade under section 1582 of this title".

SEC. 509. The second paragraph of section 1491 of title 28, United States Code, is amended by striking out "in suits" and inserting in lieu thereof "of any civil action within the exclusive jurisdiction of the Court of International Trade, or of any action".

SEC. 510. Section 1919 of title 28, United States Code, is amended by inserting "or the Court of International Trade" immediately after "court" the first place it appears.

SEC. 511. (a) Chapter 125 of title 28, United States Code, is amended by inserting immediately after section 1963 the following new section:

"§ 1963A. Registration of judgments of the Court of International Trade

"(a) A judgment in any civil action for the recovery of money or property entered by the Court of International Trade which has become final by appeal or expiration of time for appeal may be registered in any judicial district by filing a certified copy of such judgment. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

"(b) A certified copy of the satisfaction of any judgment in whole or in part may be registered in like manner in any district in which the judgment is a lien."

(b) The section analysis of chapter 125 of title 28, United States Code, is amended by inserting immediately after the item relating to section 1963 the following new item:

"1963A. Registration of judgments of the Court of International Trade."

SEC. 512. The first paragraph of section 2414 of title 28, United States Code, is amended by inserting "or the Court of International Trade" immediately after "court" in the first sentence.

TITLE VI—TECHNICAL AND CONFORMING AMENDMENTS TO OTHER ACTS

SEC. 601. The following provisions of law are amended by striking out "Customs Court" and inserting in lieu thereof "Court of International Trade":

(1) Section 6001 of title 18, United States Code.

(2) Section 305 of the Tariff Act of 1930 (19 U.S.C. 1305).

(3) Section 502(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b)).

(4) Section 503 of the Tariff Act of 1930 (19 U.S.C. 1503).

(5) Section 514 (a) and (b) of the Tariff Act of 1930 (19 U.S.C. 1514 (a) and (b)).

(6) Section 516 (d), (e), and (f) of the Tariff Act of 1930 (19 U.S.C. 1516 (d), (e), and (f)).

(7) Section 516A (a)(2), (c), (d), and (e) of the Tariff Act of 1930 (19 U.S.C. 1516A (a)(2), (c), (d), and (e)).

(8) Section 528 of the Tariff Act of 1930 (19 U.S.C. 1528).

(9) Section 308(9) of the Ethics in Government Act (28 U.S.C. app.).

(10) Section 7443(d) of the Internal Revenue Code of 1954.

(11) Section 906 of title 44, United States Code.

SEC. 602. Section 103(h) of the Act of March 27, 1978 (92 Stat. 170; 16 U.S.C. 791 (h)) is amended by striking out "section 250 of the Trade Act of 1974 (88 Stat. 2029)" and inserting in lieu thereof "section 284 of the Trade Act of 1974, except that such review shall be in the appropriate court of appeals of the United States, and the judgment of such court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code."

SEC. 603. The first section of the Act entitled "An Act to provide the name by which the Board of General Appraisers and members thereof shall be known" approved May 28, 1926 (19 U.S.C. 405a), is repealed.

SEC. 604. Section 337(c) of the Tariff Act of 1930 (19 U.S.C. 1337(c)) is amended—

(1) by inserting "for review in accordance with chapter 7 of title 5, United States Code" immediately before the period at the end of the fourth sentence; and

(2) by striking out the last sentence and inserting in lieu thereof the following new sentence: "Notwithstanding the foregoing provisions of this subsection, Commission determinations under subsections (d), (e), and (f) with respect to its findings on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the amount and nature of bond, or the appropriate remedy shall be reviewable in accordance with section 706 to title 5, United States Code."

SEC. 605. (a) Section 514(a)(4) of the Tariff Act of 1930 (19 U.S.C. 1514(a)(4)) is amended to read as follows:

"(4) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, except a determination appealable under section 337 of this Act;"

(b) Section 514(a) of the Tariff Act of 1930 (19 U.S.C. 1514(a)) is further amended by striking out "section 2632 of title 28 of the United States Code within the time prescribed by section 2631" and inserting in lieu thereof "chapter 169 of title 28 of the United States Code within the time prescribed by section 2636".

SEC. 606. Section 515(b) of the Tariff Act of 1930 (19 U.S.C. 1515(b)) is amended by striking out "section 1582" and inserting in lieu thereof "section 1581".

SEC. 607. (a) Section 516(a) of the Tariff Act of 1930 is amended—

(1) by inserting "(1)" immediately before "The Secretary";

(2) by striking out "(as defined in section 771(9) (C), (D), and (E) of this Act)";

(3) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; and

(4) by inserting at the end thereof the following new paragraph:

"(2) As used in this section, the term 'interested party' means a person who is—
"(A) a manufacturer, producer, or wholesaler in the United States;

"(B) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States; or

"(C) a trade or business association a majority of whose members are manufacturers, producers, or wholesalers in the United States, or goods of the same class or kind as the designated imported merchandise."

(b) Section 516(d) of the Tariff Act of 1930 (19 U.S.C. 1516(d)) is amended by striking out "section 2632" and inserting in lieu thereof "chapter 169".

SEC. 608. (a) Section 516A(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1516A(a)(1)) is amended to read as follows:

"(1) REVIEW OF CERTAIN DETERMINATIONS.—
"(A) THIRTY-DAY REVIEW.—Within 30 days after the date of publication in the Federal Register of notice of—

"(i) a determination by the Secretary or the administering authority, under section 303(a)(3), 702(c), or 732(c) of this Act, not to initiate an investigation,

"(ii) a determination by the administering authority or the Commission, under section 751(b) of this Act, not to review an agreement or a determination based upon changed circumstances, or

"(iii) a negative determination by the Commission, under section 703(a) or 733(a) of this Act, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation,

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

"(B) TEN-DAY REVIEW.—Within 10 days after the date of publication in the Federal Register of notice of—

"(i) a determination by the administering authority, under section 703(c) or 733(c) of this Act, that a case is extraordinarily complicated, or

"(ii) a negative determination by the administering authority under section 703(b) or 733(b) of this Act,

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based."

(b) Section 516A(a)(3) of the Tariff Act of 1930 (19 U.S.C. 1516A(a)(3)) is amended by striking out "section 2632" and inserting in lieu thereof "chapter 169".

(c) Section 516A(c)(2) of the Tariff Act of 1930 (19 U.S.C. 1516A(c)(2)) is amended by striking out the second sentence.

(d) The second sentence of section 516A(d) of the Tariff Act of 1930 (19 U.S.C. 1516A(d)) is amended to read as follows: "The party filing the action shall notify all such interested parties of the filing of an action under this section, in the form, manner, style, and within the time prescribed by rules of the court."

SEC. 609. Section 592(e) of the Tariff Act of 1930 (19 U.S.C. 1592(e)) is amended by striking out "(e) DISTRICT COURT PROCEEDINGS—" and all that follows through "under this section—" and inserting in lieu thereof the following:

"(e) COURT OF INTERNATIONAL TRADE PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—"

SEC. 610. Section 604 of the Tariff Act of 1930 (19 U.S.C. 1604) is amended—
(1) by striking out "every United States district attorney" and inserting in lieu thereof "the Attorney General of the United States";

(2) by inserting "or the Court of International Trade" immediately after "district court"; and

(3) by striking out "such district attorney" and inserting in lieu thereof "the Attorney General".

SEC. 611. (a) The second sentence of the the second paragraph of section 641(b) of the Tariff Act of 1930 (19 U.S.C. 1641(b)) is amended by striking out "in the circuit court" and all that follows through "District of Columbia" and inserting in lieu thereof "in the Court of International Trade".

(b) Section 641(b) of the Tariff Act of 1930 (19 U.S.C. 1641(b)) is amended by striking out the next to last sentence of the second paragraph.

SEC. 612. Section 250 of the Trade Act of 1974 (19 U.S.C. 2322), and the item relating to such section in the table of contents of such Act, are repealed.

SEC. 613. (a) Title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.) is amended by redesignating section 284 as section 285 and by inserting immediately after section 283 the following new section:

"Sec. 284. JUDICIAL REVIEW.

"(a) A worker, group of workers, certified or recognized union, or authorized representative of such worker or group aggrieved by a final determination of the Secretary of Labor under section 223 of this title, a firm or its representative or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 251 of this title, or a community or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 271 of this title may, within sixty days after notice of such determination, commence a civil action in the United States Court of International Trade for review of such determination. The clerk of such court shall send a copy of the summons and the complaint in such action to the Secretary of Labor or the Secretary of Commerce, as the case may be. Upon receiving a copy of such summons and complaint, such Secretary shall promptly certify and file in such court the record on which he based such determination.

"(b) The findings of fact by the Secretary of Labor or the Secretary of Commerce, as the case may be, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to such Secretary to take further evidence, and such Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(c) The Court of International Trade shall have jurisdiction to affirm the action of the Secretary of Labor or the Secretary of Commerce, as the case may be, or to set such action aside, in whole or in part. The Judgment of the Court of International Trade shall be subject to review by the United States Court of Customs and Patent Appeals as prescribed by the rules of such court. The judgment of the Court of Customs and Patent Appeals shall be subject to review by the Supreme Court of the United States upon certiorari as provided in section 1256 of title 28."

(b) The table of contents of the Trade Act of 1974 (19 U.S.C. 2101 et seq.) is amended by striking out the item relating to section 284 and inserting in lieu thereof the following new items:

"Sec. 284. Judicial review.

"Sec. 285. Effective date."

TITLE VII—EFFECTIVE DATES AND MISCELLANEOUS PROVISIONS

EFFECTIVE DATES

SEC. 701. (a) Except as provided in subsection (b) of this section, the provisions of and amendments made by this Act shall take effect on November 1, 1980.

(b) (1) The following sections of title 28, United States Code, shall apply with respect to civil actions commenced on or after the

90th day after the effective date of this Act:

(A) Sections 1582, 2639(a)(2), and 2640 (a)(6), as amended by sections 201 and 301 of this Act.

(B) Sections 1352, 1355, and 1356, as amended by sections 506, 507, and 508 of this Act.

(2) Section 592(e) of the Tariff Act of 1930, as amended by section 609 of this Act, shall apply with respect to civil actions commenced on or after 90th day after the effective date of this Act.

TREATMENT OF REFERENCES

SEC. 702. Any reference in any statute or regulation of the United States to the United States Customs Court, the U.S. Customs Court, or the Customs Court shall be deemed to be a reference to the United States Court of International Trade.

EFFECT ON CUSTOMS COURT JUDGES

SEC. 703. (a) Except as provided in subsection (b) of this section, the amendments made by title I of this Act shall not affect the status of any individual serving as judge or chief judge of the Customs Court on the date of enactment of this Act.

(b) The requirement that a person may not continue to serve as chief judge of the Court of International Trade after having reached the age of seventy years, as set forth in the amendment made by section 101 of this Act, shall apply to any individual serving as chief judge on or after the date of enactment of this Act.

EFFECT ON PENDING CASES

SEC. 704. Nothing in this Act shall cause the dismissal of any action commenced prior to the date of enactment of this Act under jurisdictional statutes relating to the Customs Court or the Court of Customs and Patent Appeals as in effect immediately prior to such date of enactment.

TVA LEGAL REPRESENTATION

SEC. 705. Nothing in this Act affects the authority of the Tennessee Valley Authority under the Tennessee Valley Authority Act of 1933 to represent itself by attorneys of its choosing.

● **Mr. DECONCINI.** Mr. President, I am pleased to initiate discussion of S. 1654, the Customs Courts Act of 1980, a bill to improve the laws governing the jurisdiction, powers and procedures of the U.S. Customs Court. S. 1654 unanimously passed the U.S. Senate on December 18, 1979. H.R. 7540, a similar bill, recently unanimously passed the House of Representatives on Monday, September 22, 1980. Subsequently, the House of Representatives called up S. 1654 and inserted the provisions of H.R. 7540. It is this language to S. 1654 which we will consider today.

Enactment of the proposed Customs Courts Act will bring necessary clarification and improvement to the laws governing the jurisdiction, powers and procedures of the U.S. Customs Court. As a result of modification to the Customs Court, certain adjustments to the appellate court, the Court of Customs and Patent Appeals were also necessary.

Over the years, complex questions have arisen concerning the jurisdiction of the Customs Court, its scope of review, and the type of relief the court may award. Periodically, Congress has addressed these issues and has altered the court's status, jurisdiction and powers to solve a specific problem or to meet a specific need at a particular time. The result is a patchwork of laws that does not always serve the public interest.

The Customs Court had its genesis in 1890 as the board of general appraisers, an administrative unit within the Department of the Treasury, which was responsible for the review of decisions by Customs officials as to the rate and amount of duty imposed on imported merchandise, as well as the value of such merchandise. In 1926, legislation sought to provide greater judicial review and uniformity in the decisionmaking process, but it did not make any essential changes in the functions, duties or jurisdiction of the newly created court. In the following 30-year period the court gradually became an integral part of the Federal judicial system. In 1956, Congress declared the Customs Court to be a court "established under article III of the Constitution of the United States" (28 U.S.C. § 251).

In 1970 Congress recognized that the court's procedures and jurisdiction were in need of significant revision. At the time, Congress focused its legislative efforts on the Customs Courts Act of 1970, which made sweeping procedural reforms in the workings of the Customs Court. The 1970 legislation, however, still left the substantive issues regarding the jurisdiction and powers of the court unresolved.

Recently, with the completion of the Tokyo round of the multilateral trade negotiations and the President's signing of the Trade Agreements Act of 1979, the committee realized more than ever the need for additional legislation regarding the Customs Court. The Trade Agreements Act substantially expanded the opportunity for judicial review of antidumping and countervailing duty determinations. The act also, for the first time, authorized the Customs Court to grant injunctive relief in limited circumstances.

The primary statutes governing the U.S. Customs Court have not kept pace with the increasing complexities of modern day international trade litigation. The majority of cases before the Customs Court traditionally involved classification and valuation issues. In almost all of these cases, the court could only agree or disagree with the decision of the administrative agency. The court could not issue money judgments, nor, until 1980, could it provide equitable relief. The process which began in 1890 has resulted in "a jigsaw puzzle with enough missing pieces to make it difficult for any but the closest observer to discover what the completed puzzle was intended to depict."

The jurisdictional statutes of the Customs Court were drafted at a time when tariff rates were an essential factor in international trade. Congress was most sensitive to this and thus was primarily concerned with establishing methods for the judicial review of administrative determinations pertaining to the classification and valuation of imported merchandise. While these statutes did not always recognize the principle of having a decisive impact on the rate of duty ultimately assessed, the overall statutory scheme was constructed to facilitate challenges to classification and valuation determinations.

Multilateral negotiations have led to a significant decrease in tariff duties and consequently a diminishing importance

in classification and valuation cases in the overall spectrum of international trade litigation. In their place other measures, such as antidumping and countervailing duty statutes, have assumed a greater importance. The net result has been a significant increase in the number of suits challenging governmental determinations in these areas.

Many suits involving international trade issues are and have been instituted in the Federal district courts rather than the U.S. Customs Court. One reason is that often it is difficult to determine in advance whether or not a particular case falls within the jurisdictional scheme of the Customs Court. In addition, because of the limited powers of Customs Court, litigants often choose another forum, for example, the Federal district courts, where they can gain the appropriate relief for their alleged injuries. Many district courts have refused to entertain such suits, citing the constitutional mandate requiring uniformity in decisions relating to imports. (See U.S. Const. art. I, § 8.) In so doing, the district courts sought to preserve the congressional grant of exclusive jurisdiction to the U.S. Customs Court for judicial review of all matters relating to imports.

The result has been inconsistent judicial decisions with litigants proceeding cautiously when choosing a forum for judicial review. If an improper forum is chosen, that may well result in a holding that the plaintiff is before the wrong court. A dismissal for want of jurisdiction can effectively preclude a judicial determination of the case on its merits. Furthermore, the type of relief available depends greatly upon a plaintiff's ability to persuade a court that it possesses jurisdiction over a particular case. Thus, some individuals will obtain relief which is denied others, who by chance select an improper forum to institute suit.

It is our view that clarification of jurisdiction possesses substantial advantages in terms of our ability to conduct our trade policy. This would enable us to maintain judicial review, while simultaneously increasing its availability, and assuring our trading partners that administrative determinations in this area will be subject to judicial review only by a limited number of courts which are in a position to render expeditious decisions. The clarification and expansion of the customs courts jurisdiction is warranted not only because it will eliminate the considerable jurisdictional confusion which now exists, but because of two other important considerations: Considerations of judicial economy, and the need to increase the availability of judicial review in the field of international trade in a manner which results in uniformity without sacrificing the expeditious resolution of import-related disputes.

It has become commonplace to refer to our district courts and courts of appeals as overburdened and overworked. The enormous increase in litigation instituted in the Federal courts has led to considerable delays in the resolution of these disputes due to calendar congestion. The comparatively recent increase in litigation involving the field of international trade has only compounded

this problem by adding a new category of cases to those which are already instituted in the district courts.

Under these circumstances, it makes good sense in terms of the availability of judicial resources to transfer some of the cases now instituted in the crowded district courts to the underutilized customs courts.

Another existing defect is that the court is hamstrung in exercising its responsibilities because, as a matter of settled law, it lacks critical equitable powers; it may only entertain cases and controversies which have often reached a degree of ripeness that could make equitable relief too late to be useful, and it cannot fashion equitable remedies when appropriate. The proposed Customs Courts Act of 1980 resolves this long-standing problem by granting the court full equitable powers. This provision will provide a forum for litigants seeking immediate relief in matters arising from import transactions. At present, litigants can only hope the district court will find subject matter jurisdiction and grant an equitable remedy.

In conclusion, S. 1654 would make it clear that the Customs Court—renamed the U.S. Court of International Trade—possesses broad jurisdiction to entertain certain civil actions arising out of import transactions. In addition, the Customs Courts Act of 1980 would make it clear that, in those civil actions within its jurisdiction, the court possesses the authority to grant the appropriate relief when required to remedy an injury. These provisions, when coupled with those contained in the Trade Agreements Act of 1979, make it clear to those who suffer an alleged injury in this area, that they may seek redress in a court with confidence that their case will be heard on the merits—not decided upon jurisdictional grounds and that, if they are successful, the Court of International Trade will be able to afford them the relief which is appropriate and necessary to make them whole.

This legislation will offer the international trade community, as well as domestic interests, consumer groups, labor unions and other concerned citizens, a vastly improved forum for judicial review of administrative actions of the U.S. Customs Service and other Government agencies dealing with imported merchandise.

The language under consideration at this time is largely an improvement over the original provisions of S. 1654. However, the one glaring exception is the political affiliation requirement. This provision, which is also current law, states that no more than five of the nine members of the court may be from the same political party. I am strongly opposed to this measure, but I am willing to accept passage of the bill with it intact, in light of the imminent end of the session.

I view this legislation as too important to risk a time-consuming conference over the single provision provoking disagreement between the House and Senate. As you may be aware, the Customs Court Act of 1980 complements the Trade Agreements Act of 1979, which took effect

January 1, 1980, so its expedited passage is of great importance. If however, this bill is passed without deletion of the political affiliation requirement, I will seriously consider sponsoring legislation next session to correct what I consider to be an inappropriate requirement on a court established under article III.

It is inappropriate to have a political affiliation requirement for Customs Court's judges for several reasons. First of all, the Customs Court is and would continue to be unique among article III courts in being subject to such a requirement. The requirement is a vestige of a provision originally applied to the board of general appraisers—the precursor for the Customs Court—established in 1890 as a quasi-administrative, quasi-judicial body to review classification and evaluation of imports.

A political affiliation balancing requirement may make sense in the context of appointees to regulatory boards and commissions, since such officials have relatively short terms, and are charged with making policy decisions often heavily tinged with political considerations. But article III judges appointed for life, who make decisions on the basis of assessment of facts and interpretation of law, should be appointed on the basis of merit alone, and without regard to any political considerations.

I believe that the retention of the political affiliation requirement will only tend to politicize the court—a result at odds with the bill's laudable goals of enhancing the importance and effectiveness of the court.

In addition, I would like the record to clearly indicate that the elimination of this requirement is supported by the Administrative Conference of the United States, the American Bar Association, the Association of the Customs Bar, the Committee on Customs Laws of the New York County Lawyers' Association, and the U.S. Customs Court.

At the request of the Senate Finance Committee, I would like to add one point of clarification regarding section 604 of the act. That section is not intended to imply that the so-called substantial evidence test applies to public interest determinations of the U.S. International Trade Commission in section 337 cases.

I would now like to take this opportunity to pay special tribute to those individuals who, through their untiring efforts, have helped make this bill a reality so it could come to the floor today.

Michael Altier, counsel of the subcommittee which I chair, deserves a great deal of the credit for the immense amount of work he put in. Also, Romano Romani, my staff director, deserves credit for his work on this proposal. In addition, I would like to thank Ann Woodley for all of her recent technical contributions to the legislation.

Before closing, I would also like to formally thank David Cohen, director of the commercial litigation branch of the Department of Justice. Mr. Cohen has been instrumental in assisting us in the development of this legislation.

This legislation is supported by the administration, specifically the Justice Department and the Commerce Depart-

ment, the American Bar Association, the Association of the Customs Bar, the Administrative Conference of the United States, the American Importers' Association, the New York County Lawyers' Association, the U.S. Customs Court and the U.S. Court of Customs and Patent Appeals. In addition we have received helpful suggestions from the U.S. International Trade Commission.

In conclusion, I would like to urge my colleagues to support S. 1654, the Customs Courts Act of 1980. It is a long overdue and very necessary piece of legislation.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. DeCONCINI, I move that the Senate concur in the amendment of the House.

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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'Privacy Protection Act of 1980', do pass with the following amendments:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "Documentary Materials Privacy Protection Act of 1980".

UNLAWFUL ACTS

SEC. 2. (a) Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize any work product materials possessed by a person in connection with a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce; but this provision shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if—

(1) there is probable cause to believe that the person possessing the materials has committed or is committing the criminal offense to which the materials relate: *Provided, however,* That a government officer or employee may not search for or seize materials described in subsection 2(a) under the provisions of this paragraph if the offense to which the materials relate consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under 18 U.S.C. 793, 18 U.S.C. 794, 18 U.S.C. 797, 18 U.S.C. 798, 42 U.S.C. 2274, 42 U.S.C. 2275, 42 U.S.C. 2277, or 50 U.S.C. 783); or